

EXHIBIT 7

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<p>258</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA 2 RICHMOND DIVISION 3 ----- 4 ePLUS, INC., : 5 Plaintiff, : 6 v. : Civil Action 7 : No. 3:09CV620 LAWSON SOFTWARE, INC., : 8 : January 5, 2011 9 Defendant. : 10 ----- 11 COMPLETE TRANSCRIPT OF JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esq. 17 Jennifer A. Albert, Esq. 18 Michael T. Strapp, Esq. 19 David M. Young, Esq. 20 GOODWIN PROCTOR 21 901 New York Avenue, NW 22 Washington, D.C. 20001 23 Craig T. Merritt, Esq. 24 CHRISTIAN & BARTON 25 909 E. Main Street, Suite 1200 Richmond, VA 23219-3095 Counsel for the plaintiff ePlus DIANE J. DAFFRON, RPR OFFICIAL COURT REPORTER UNITED STATES DISTRICT COURT</p>	<p>260</p> <p>1 (The proceedings in this matter commenced at 2 9:30 a.m.) 3 THE CLERK: Civil Action No. 3:09CV00620, 4 ePlus, Incorporated v. Lawson Software, Incorporated. 5 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 6 Ms. Jennifer Albert, Mr. Michael T. Strapp, and 7 Mr. David Young represent the plaintiff. 8 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, 9 IV, Ms. Kirstin Stoll-DeBell, and Mr. William D. 10 Schultz represent the department. 11 Are counsel ready to proceed? 12 MR. ROBERTSON: Yes, Your Honor. 13 MR. McDONALD: Yes, Your Honor. 14 THE COURT: All right. Good morning, ladies 15 and gentlemen. 16 THE JURY: Good morning. 17 THE COURT: All right, Mr. Robertson, you may 18 resume your examination of the witness. 19 MR. ROBERTSON: Thank you, Your Honor. 20 THE COURT: And I remind you, sir, you're 21 under the same oath which you took yesterday. 22 THE WITNESS: Yes, sir. 23 BY MR. ROBERTSON: (Continuing) 24 Q MR. Momyer, we spent a good deal of time yesterday 25 discussing this RIMS system which you were named</p>
<p>259</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 MERCHANT & GOULD 6 3200 IDS Center 7 80 South Eighth Street 8 Minneapolis, MN 55402-2215 9 Dabney J. Carr, IV, Esq. 10 TROUTMAN SANDERS 11 Troutman Sanders Building 12 1001 Haxall Point 13 P.O. Box 1122 14 Richmond, VA 23218-1122 15 16 Counsel for the defendant Lawson Software. 17 18 19 20 21 22 23 24 25</p>	<p>261</p> <p>1 inventor along with Mr. Johnson. Do you recall that? 2 A Yes, I do. 3 Q I'd like to move on now to this electronic 4 sourcing system and method, the inventions that are 5 subject of the patents that are at issue here if we 6 could. All right? 7 A Okay. 8 Q Tab 1 in your witness notebook, I believe it's 9 Plaintiff's Exhibit No. 1, if you could go to column 10 1. 11 THE COURT: That's also in your small book 12 there if you need to. 13 Q And tab 2. Thank you. 14 So we're on column 1 now of the '683 patent, 15 Exhibit No. 1. Now, suggestion was made yesterday 16 that the Patent Office was unaware of the RIMS patent. 17 Did you disclose the RIMS patent to the Patent Office? 18 A Yes, I believe so. 19 MR. McDONALD: Objection, Your Honor. This 20 is going to the validity issue. Again, I thought we 21 were going to stick with infringement. 22 THE COURT: Isn't it? 23 MR. ROBERTSON: No, Your Honor. 24 THE COURT: Why does it have to do with 25 infringement?</p>

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<p style="text-align: right;">502</p> <p>Weaver - Direct 502</p> <p>1 and then wait for them to come back with bids, accept one, send</p> <p>2 out a purchase order, and then see whether or not you got the</p> <p>3 equipment that you wanted. I know there was one time where I</p> <p>4 ordered equipment and never was available, so I didn't get what</p> <p>5 I wanted.</p> <p>6 Q Was this process time-consuming?</p> <p>7 A Very.</p> <p>8 Q Was it costly for you?</p> <p>9 A Oh, yes. Costly in time and costly in personnel.</p> <p>10 Q Was it efficient?</p> <p>11 A No.</p> <p>12 Q Can you tell us -- you've had an opportunity to read</p> <p>13 through all the three patents-in-suit in some detail; is that</p> <p>14 right?</p> <p>15 A I have.</p> <p>16 Q You've studied the background of the invention?</p> <p>17 A I have.</p> <p>18 Q And the summary of the inventions?</p> <p>19 A Yes.</p> <p>20 Q And you've looked at the description of the drawings?</p> <p>21 A Yes.</p> <p>22 Q And you've read the detailed description of the invention</p> <p>23 which is some 20 or so columns?</p> <p>24 A I have.</p> <p>25 Q And you've read the claims that are involved in this case;</p>	<p style="text-align: right;">504</p> <p>Weaver - Direct 504</p> <p>1 terms in their binders, in their book which I believe is at</p> <p>2 tab --</p> <p>3 THE COURT: Tab six.</p> <p>4 MR. ROBERTSON: Thank you, Your Honor.</p> <p>5 Q Let me ask, in rendering the opinions you're going to give</p> <p>6 with respect to the infringement, did you apply the Court's</p> <p>7 claim construction or some other claim construction?</p> <p>8 A I used the Court's claim construction.</p> <p>9 Q Did you attempt to faithfully use that claim construction</p> <p>10 when you were looking at the functionality and capability of</p> <p>11 Lawson's software?</p> <p>12 A Yes, I did.</p> <p>13 Q Did you come up with any of your own constructions</p> <p>14 contrary to the Court?</p> <p>15 A No.</p> <p>16 Q So just back to the basic subject matter, at a high level</p> <p>17 of these patents that were issued, what do you consider the</p> <p>18 benefits to be realized by the inventions over this procurement</p> <p>19 process that you have described?</p> <p>20 A Well, by computerizing the process, by making the catalogs</p> <p>21 electronic, by being able to search them electronically, by</p> <p>22 being able to create requisitions and purchase orders, you</p> <p>23 reduce the economic friction in an electronic commerce system.</p> <p>24 You make it more efficient, you make it more time-conserving,</p> <p>25 and you save money.</p>
<p style="text-align: right;">503</p> <p>Weaver - Direct 503</p> <p>1 correct?</p> <p>2 A Correct.</p> <p>3 Q And understand that there are 12 representative claims</p> <p>4 that are at issue in the three patents that are Plaintiff's</p> <p>5 Exhibit Numbers 1, 2, and 3?</p> <p>6 A I do.</p> <p>7 Q So you reviewed the '683 patent, the '516 patent, and the</p> <p>8 '172 patent; correct?</p> <p>9 A I have.</p> <p>10 Q So do you feel you have an understanding, having worked</p> <p>11 with these patents and been involved in these for the last six</p> <p>12 years, with respect to the subject matter and what's disclosed</p> <p>13 and what is claimed?</p> <p>14 A I do.</p> <p>15 Q Did you also have an opportunity to review the Court's</p> <p>16 construction of certain claim terms that were in dispute among</p> <p>17 the parties?</p> <p>18 A Yes.</p> <p>19 Q And you received a copy of that?</p> <p>20 A Yes.</p> <p>21 Q Do you have -- you are holding a piece of paper in your</p> <p>22 hand. Is that the glossary of terms that has been -- is that</p> <p>23 the glossary of terms?</p> <p>24 A Yes, it is.</p> <p>25 Q Just so you are informed, the jurors have that glossary of</p>	<p style="text-align: right;">505</p> <p>Weaver - Direct 505</p> <p>1 Q How about the ability to search multiple vendors at the</p> <p>2 same time?</p> <p>3 A Oh, of course. Searching multiple catalogs gives you the</p> <p>4 ability to cross compare, to comparison shop.</p> <p>5 Q What about the requisitioning and ordering module that</p> <p>6 permits you to go -- to do multiple requisitions from items</p> <p>7 from multiple vendors and then issue multiple purchase orders?</p> <p>8 Do you see any benefits to that?</p> <p>9 A If you go back to the example that I had where I had to</p> <p>10 get requisitions issued to each vendor and then a purchase</p> <p>11 order had to go individually to each vendor, that's a lot of</p> <p>12 time and effort. So the ability to put everything you want on</p> <p>13 one purchase requisition electronically and then have the</p> <p>14 computer system break that requisition up into however many</p> <p>15 purchase orders are appropriate, typically one purchase order</p> <p>16 per vendor with however many orders from the requisition,</p> <p>17 that's a real benefit.</p> <p>18 Q The patents also discuss ability to gain approvals for</p> <p>19 requisitions in order to have the process flow go smoothly and</p> <p>20 quickly and more efficiently?</p> <p>21 A Yes, they do.</p> <p>22 Q Are there aspects of the inventions generally that relate</p> <p>23 to determining whether there's an item available in the</p> <p>24 vendor's inventory?</p> <p>25 A Oh, yes. We're going to see that in the patent claims.</p>

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<p style="text-align: right;">506</p> <p>Weaver - Direct 506</p> <p>1 Q That is an important aspect of the invention in your view?</p> <p>2 A Yes, it is.</p> <p>3 Q Dr. Weaver, in determining and preparing your expert</p> <p>4 reports in this case, and in preparing the opinions that you're</p> <p>5 going to be offering, did you consider what a person of</p> <p>6 ordinary skill in the art would be in the subject matter of</p> <p>7 these patents?</p> <p>8 A Yes, I did.</p> <p>9 Q Why did you do that?</p> <p>10 A Well, it's required that the patents be seen from the lens</p> <p>11 of this hypothetical person of ordinary skill in the art.</p> <p>12 That's a person who can read and understand the patents and</p> <p>13 implement whatever is there.</p> <p>14 Q Now, this person of ordinary skill in the art from which</p> <p>15 we have to view these patents at issue and the claims that</p> <p>16 we're going to be talking about, is this a real person or a</p> <p>17 hypothetical construct?</p> <p>18 A It's a hypothetical construct.</p> <p>19 Q And when you look at and try to determine who this person</p> <p>20 of ordinary skill in the art would be, what time frame were you</p> <p>21 looking at?</p> <p>22 A Well, that has to be -- in the case of these patents, that</p> <p>23 would have to be 1993 to 1994, during the period of the</p> <p>24 invention.</p> <p>25 Q And is that when the patents were conceived and then</p>	<p style="text-align: right;">508</p> <p>Weaver - Direct 508</p> <p>1 to be offering in this case both on the issue of infringement</p> <p>2 and on the issue of validity?</p> <p>3 A Yes, I did.</p> <p>4 Q Did you have an opportunity to review who the hypothetical</p> <p>5 person of ordinary skill in the art would be under Lawson's</p> <p>6 expert's perspective?</p> <p>7 A Yes, and it's similar.</p> <p>8 MR. ROBERTSON: Mr. McDonald, do you want to agree on</p> <p>9 that if we can at this point?</p> <p>10 MR. McDONALD: I thought we already did.</p> <p>11 MR. ROBERTSON: All right.</p> <p>12 THE COURT: I thought you stipulated that, haven't</p> <p>13 you?</p> <p>14 The person of ordinary skill in the art, ladies and</p> <p>15 gentlemen, is something you'll hear from these experts, and</p> <p>16 it's been explained what it is, and there'll be instructions</p> <p>17 for you later, but that person is a person, the parties</p> <p>18 agree -- excuse me -- who is a college graduate with a degree</p> <p>19 in computer science or electrical engineering or like studies</p> <p>20 with a year or so of experience writing software and</p> <p>21 understanding -- and who understands the procurement process,</p> <p>22 electronic procurement process; is that right, counsel?</p> <p>23 MS. STOLL-DeBELL: I think it's close enough, Your</p> <p>24 Honor.</p> <p>25 THE COURT: Good enough for government work.</p>
<p style="text-align: right;">507</p> <p>Weaver - Direct 507</p> <p>1 reduced to practice?</p> <p>2 A Correct.</p> <p>3 Q And you are familiar that the filing date of this patent,</p> <p>4 these patents has what's called a priority date back to 1994?</p> <p>5 A Yes.</p> <p>6 Q Can you tell the jury what you understand that term to</p> <p>7 mean, a priority date?</p> <p>8 A That means that the protection of the patents that we'll</p> <p>9 talk about later, what the claims mean, goes back to that date,</p> <p>10 the filing date.</p> <p>11 Q So in undertaking your study of these patents to determine</p> <p>12 who this hypothetical person of ordinary skill in the art would</p> <p>13 be for purposes of viewing the context, the historical context</p> <p>14 where these patents were, did you come to any conclusions?</p> <p>15 A I did.</p> <p>16 Q And can you tell us what your opinion is as to who this</p> <p>17 hypothetical person of ordinary skill in the art would be for</p> <p>18 these ePlus patents?</p> <p>19 A So based on my experience, this person would be a college</p> <p>20 graduate with a degree in computer science or something</p> <p>21 related, like electrical engineering, and would have a year or</p> <p>22 two of practical experience with writing software and</p> <p>23 understanding the flow of information that is necessary for the</p> <p>24 purchase of goods and services.</p> <p>25 Q And did you apply that person to the opinions you're going</p>	<p style="text-align: right;">509</p> <p>Weaver - Direct 509</p> <p>1 MS. STOLL-DeBELL: I think so.</p> <p>2 Q Let me ask you this: Are you familiar with that person of</p> <p>3 that level of skill and knowledge during the time period we're</p> <p>4 discussing?</p> <p>5 A Yes. I was teaching people like that.</p> <p>6 Q In the 1993 time frame?</p> <p>7 A Right, 1993, 1994, yes.</p> <p>8 Q Did you work on any projects during that period for any</p> <p>9 companies in which the subject, type of subject matter of this</p> <p>10 might involve persons who had similar experience and education?</p> <p>11 A Right. So I mentioned this research project. There was</p> <p>12 this company call Epcor that wanted to build an electronic</p> <p>13 distributorship, and so they came to my research group, and the</p> <p>14 person I hired to work on this was two years out of the</p> <p>15 computer science bachelor's degree, and she and I worked on the</p> <p>16 design of this system whereby there was an electronic catalog,</p> <p>17 and a consumer using the internet could look at the catalog and</p> <p>18 could order from it and kind of a rudimentary inventory</p> <p>19 management.</p> <p>20 Q Why don't we go to Plaintiff's Exhibit Number 1.</p> <p>21 THE COURT: Are you going to get into infringement</p> <p>22 opinions now?</p> <p>23 MR. ROBERTSON: I'm going to get into a little bit</p> <p>24 more about high level overview, and then I'm going to start</p> <p>25 looking at specific claims, Your Honor, within a few pages.</p>

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<p>515</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 ----- 5 ePLUS, INC., : 6 : 7 Plaintiff, : 8 v. : Civil Action 9 : No. 3:09CV620 10 LAWSON SOFTWARE, INC., : 11 : January 6, 2011 12 Defendant. : 13 ----- 14 15 COMPLETE TRANSCRIPT OF JURY TRIAL 16 BEFORE THE HONORABLE ROBERT E. PAYNE 17 UNITED STATES DISTRICT JUDGE, AND A JURY 18 19 APPEARANCES: 20 Scott L. Robertson, Esq. 21 Jennifer A. Albert, Esq. 22 Michael T. Strapp, Esq. 23 David M. Young, Esq. 24 GOODWIN PROCTOR 25 901 New York Avenue, NW Washington, D.C. 20001 Craig T. Merritt, Esq. CHRISTIAN & BARTON 909 E. Main Street, Suite 1200 Richmond, VA 23219-3095 Counsel for the plaintiff ePlus DIANE J. DAFFRON, RPR OFFICIAL COURT REPORTER UNITED STATES DISTRICT COURT</p>	<p>517</p> <p>1 (The proceedings in this matter commenced at 2 9:20 a.m.) 3 THE CLERK: Civil Action No. 3:09CV00620, 4 ePlus, Incorporated v. Lawson Software, Incorporated. 5 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 6 Ms. Jennifer A. Albert, Mr. Michael T. Strapp, and Mr. 7 David M. Young represent the plaintiff. 8 Mr. Daniel W. McDaniel, Mr. Dabney J. Carr, 9 IV, Ms. Kirstin L. Stoll-DeBell, and Mr. William D. 10 Schultz represent the defendant. 11 Are counsel ready to proceed? 12 MR. ROBERTSON: Yes, Your Honor. 13 MR. McDONALD: Yes, Your Honor. 14 THE COURT: All right. Thank you very much. 15 I apologize for keeping you-all waiting this 16 morning. I had a mechanical malfunction that I needed 17 to attend to, and I'm not very mechanically oriented. 18 All right, Mr. Robertson. 19 Dr. Weaver, I remind you you're under the 20 same oath which you took yesterday. 21 THE WITNESS: Yes, Your Honor. 22 BY MR. ROBERTSON: (Continuing) 23 Q Good morning, Dr. Weaver. 24 A Good morning. 25 Q If we could have Plaintiff's Exhibit No. 1 back up</p>
<p>516</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 MERCHANT & GOULD 6 3200 IDS Center 7 80 South Eighth Street 8 Minneapolis, MN 55402-2215 9 Dabney J. Carr, IV, Esq. 10 TROUTMAN SANDERS 11 Troutman Sanders Building 12 1001 Haxall Point 13 P.O. Box 1122 14 Richmond, VA 23218-1122 15 16 Counsel for the defendant Lawson Software. 17 18 19 20 21 22 23 24 25</p>	<p>518</p> <p>1 on the screen again, the '683 patent, the cover page 2 here. 3 Dr. Weaver, the jurors have seen this exhibit now 4 several times and it's in their jury notebooks. This 5 is at tab 2. Can you just tell us what is the title 6 of the patent? 7 A Electronic Sourcing System and Method. 8 Q Has the Court defined the term "electronic 9 sourcing system"? 10 A Yes, it has. 11 Q What's your understanding as to what that 12 construction is? 13 A In the glossary of claim terms, the "electronic 14 sourcing system" has been defined by the Court to be 15 an electronic system for use by a prospective buyer to 16 locate and find items to purchase from sources, 17 suppliers or vendors. 18 Q What is your understanding of what a source is, 19 sir? 20 A A source would be a vendor or a manufacturer or a 21 distributor. 22 Q In the Court's construction of the claim term 23 "catalog" or "product catalog," how does the Court 24 define what a vendor can be? 25 A The vendor, in the Court's construction, a vendor</p>

<p>559</p> <p>1 A We sure will.</p> <p>2 Q The next element of Claim Three, which is</p> <p>3 color-coded blue and has this means for building a</p> <p>4 requisition using data relating to selected matching</p> <p>5 items and their associated sources, what's your</p> <p>6 understanding as to what a requisition is?</p> <p>7 A The requisition is the formal list of items that</p> <p>8 you wish to purchase.</p> <p>9 Q Moving on to the next element of Claim Three,</p> <p>10 which is yellow in your illustration. It says, A</p> <p>11 means for processing the requisition to generate one</p> <p>12 or more purchase orders for the selected matching</p> <p>13 items. You mention the term "purchase order" when you</p> <p>14 were discussing requisitions. How does a purchase</p> <p>15 order differ from a requisition?</p> <p>16 A The requisition is the list of things you want. A</p> <p>17 purchase order is the contract vehicle for buying. So</p> <p>18 when I have a purchase order and I send it to a</p> <p>19 company, this is the legal document that says I want</p> <p>20 to buy the item or items on this purchase order.</p> <p>21 Requisition is your total list of things you'd</p> <p>22 like to buy. Purchase orders go to individual</p> <p>23 companies.</p> <p>24 Q When you're providing your understanding of the</p> <p>25 definitions and the meanings of these terms, is that</p>	<p>561</p> <p>1 MR. McDONALD: Your Honor, I'm going to</p> <p>2 object to this question about this. This is a</p> <p>3 means-plus-function clause and he's asking him what it</p> <p>4 means. It should be done in the context of the --</p> <p>5 THE COURT: I was just looking at page 2 of</p> <p>6 the glossary. I think that's been defined over there.</p> <p>7 MR. ROBERTSON: I was just going to ask him</p> <p>8 to go to that page.</p> <p>9 THE COURT: Don't be having him give his own</p> <p>10 constructions, please, before you ask him to go to the</p> <p>11 ones that have been construed.</p> <p>12 BY MR. ROBERTSON:</p> <p>13 Q If you go to page 2 of the Court's glossary, Dr.</p> <p>14 Weaver.</p> <p>15 A Yes.</p> <p>16 Q What's the function that's being defined here on</p> <p>17 the means for converting data for this claim element?</p> <p>18 A The function of this element is converting data</p> <p>19 related to a selected matching item and an associated</p> <p>20 source.</p> <p>21 Q According to the Court, how can this function be</p> <p>22 accomplished? By what structure?</p> <p>23 A The corresponding structures, materials or acts of</p> <p>24 this element are disclosed as one or more non-catalog</p> <p>25 databases identifying cross-referenced items,</p>
<p>560</p> <p>1 the same understanding as a person of ordinary skill</p> <p>2 in the art at the time?</p> <p>3 A Yes.</p> <p>4 Q So how would the fifth element of Claim Three be</p> <p>5 satisfied?</p> <p>6 A We would have to see a requisition module that can</p> <p>7 take the formal requisition, which could have many</p> <p>8 items from many vendors, and then turn that into one</p> <p>9 or more purchase orders. And, typically, you have all</p> <p>10 the items from one vendor on one purchase order if you</p> <p>11 can do it. If they are present.</p> <p>12 Q Moving on to the sixth and last element of Claim</p> <p>13 Three, which you have color-coded brown. That element</p> <p>14 recites means for converting data relating to a</p> <p>15 selected matching item and an associated source to</p> <p>16 data relating to an item and a different source. How</p> <p>17 are we to understand that claim element?</p> <p>18 A So if I have a list of items and for some</p> <p>19 reason -- let's say I want to do comparison shopping</p> <p>20 or say that the item that I want, I've checked the</p> <p>21 inventory, and it's not available. So there has to be</p> <p>22 a converting means whereby I can look for similar</p> <p>23 items, and this is all computer assisted. I can find</p> <p>24 similar items that I might choose instead of the one</p> <p>25 that I had initially inquired about.</p>	<p>562</p> <p>1 identical items, or generally equivalent items; one or</p> <p>2 more cross-reference tables or file identifying</p> <p>3 cross-referenced items, identical items, or generally</p> <p>4 equivalent items; one or more codes corresponding to</p> <p>5 cross-referenced items, identical items or generally</p> <p>6 equivalent items; and their equivalents.</p> <p>7 Q In that definition there are non-catalog databases</p> <p>8 identifying cross-referenced items, identical items or</p> <p>9 generally equivalent items, cross-reference tables or</p> <p>10 files and one or more codes.</p> <p>11 As a computer scientist, can you tell us what your</p> <p>12 understanding as a person of ordinary skill in the art</p> <p>13 would understand those three terms to mean?</p> <p>14 A Sure. So a non-catalog database is a file that is</p> <p>15 not part of the physical structure of the database</p> <p>16 system. So it's an external file.</p> <p>17 In this context, it's identifying the</p> <p>18 cross-referenced items. So, for instance, we might</p> <p>19 have a vendor -- think of a file that has records.</p> <p>20 Think of that as a row in a table. We might have one</p> <p>21 vendor's part number and a second vendor's part number</p> <p>22 in that row. And if this is in a cross-reference</p> <p>23 index that indicates in this context that those two</p> <p>24 part numbers are identical or generally equivalent --</p> <p>25 let's see. What was the next one? Okay.</p>

<p>567</p> <p>1 A Yeah, okay. So the catalog database is the</p> <p>2 electronic form of the catalogs all put together so</p> <p>3 that they can be searched. That is the catalog</p> <p>4 database.</p> <p>5 Q Does the Lawson procurement system include a</p> <p>6 database in its inventory control module?</p> <p>7 A Yes, it does.</p> <p>8 Q Can supplier product catalog be loaded into that</p> <p>9 control module?</p> <p>10 A Yes, we'll see that.</p> <p>11 Q What's the selection icon?</p> <p>12 A Of all the catalogs that are in the database, the</p> <p>13 user interface provides a way to select one or more</p> <p>14 that are going to be searched.</p> <p>15 Q Now, you have all of these modules I see here</p> <p>16 within a gray box. What are you trying to illustrate</p> <p>17 there?</p> <p>18 A The gray box is the Lawson system.</p> <p>19 Q And these are the various components?</p> <p>20 A These are components, modules.</p> <p>21 Q There's an icon there for searching for matching</p> <p>22 items. Do you see that?</p> <p>23 A Yes.</p> <p>24 Q What did you intend to illustrate there?</p> <p>25 A Using the user interface, one engages a search</p>	<p>569</p> <p>1 delete to it. So in computer terminology, we call</p> <p>2 this a cache, a C-A-C-H-E. So it's a data structure</p> <p>3 that holds data, and then it's going to be transferred</p> <p>4 to the requisition module, and it's in the requisition</p> <p>5 module that the requisition is created.</p> <p>6 Q All right. Thank you for that correction. So is</p> <p>7 it consistent with an order list?</p> <p>8 A The order list is the shopping cart and that's</p> <p>9 what becomes the requisition.</p> <p>10 Q Did the Court define what an order list is in its</p> <p>11 glossary of claim terms?</p> <p>12 A Yes. A list of desired catalog items.</p> <p>13 Q Did you apply that construction in doing your</p> <p>14 infringement analysis?</p> <p>15 A Absolutely.</p> <p>16 Q Next you have an icon for generating purchase</p> <p>17 orders. Do you see that as part of the overview of</p> <p>18 the Lawson procurement system?</p> <p>19 A Yes.</p> <p>20 Q Can you explain that process here?</p> <p>21 A So we've got our requisition. This is our formal</p> <p>22 list of the things we want to buy. It might have one</p> <p>23 item. It might have a hundred items. The items might</p> <p>24 be from one vendor or they might be from 100 vendors.</p> <p>25 Whatever that requisition says, the purchase order</p>
<p>568</p> <p>1 program and gives it a search query or initiates a</p> <p>2 search using a characteristic of a drop down menu.</p> <p>3 And the search engine then engages and returns items</p> <p>4 that match the query.</p> <p>5 Q Did you examine a Lawson software program that</p> <p>6 permits a user of a Lawson system to perform that</p> <p>7 functionality?</p> <p>8 A Yes, the requisitioning system does that.</p> <p>9 Q You have building a requisition icon here. Do you</p> <p>10 see that?</p> <p>11 A Yes.</p> <p>12 Q Please explain what you're intending to illustrate</p> <p>13 there?</p> <p>14 A So in the Lawson system you build a shopping cart,</p> <p>15 then you add and delete items from it until you're</p> <p>16 satisfied with it. And then you do a checkout from</p> <p>17 the Lawson system. And that engages the requisition</p> <p>18 system and builds the requisition of all the items</p> <p>19 that you want to order.</p> <p>20 Q Are you familiar with the term "a shopping cart"?</p> <p>21 A Yes.</p> <p>22 Q Is that consistent with your understanding of</p> <p>23 building a requisition?</p> <p>24 A Well, it's not the requisition. It's the data</p> <p>25 structure that can be modified. You can add and</p>	<p>570</p> <p>1 module takes that requisition and typically pulls out</p> <p>2 all of the requisition items that are going to be</p> <p>3 ordered from a single vendor and creates a purchase</p> <p>4 order for that vendor. Then it pulls all the items</p> <p>5 that go to another vendor and creates a separate</p> <p>6 purchase order for the second vendor and so on until</p> <p>7 all the items in the requisition have appeared in some</p> <p>8 purchase order.</p> <p>9 Q Did you do analysis of any Lawson software program</p> <p>10 or module that performs that functionality?</p> <p>11 A Yes, we're going to see that, and it's going to be</p> <p>12 the Lawson P.O. 100 program. Their purchase order</p> <p>13 program that converts a requisition into one or more</p> <p>14 purchase orders.</p> <p>15 Q Now, you've illustrated a number of arrows between</p> <p>16 these various software programs or modules that you've</p> <p>17 identified as part of the overall Lawson infringing</p> <p>18 system. What are you intending to indicate by those</p> <p>19 arrows?</p> <p>20 A Well, the arrows with the single head indicate</p> <p>21 unit directional information flow. The arrows that</p> <p>22 are double-headed indicate bidirectional data flow</p> <p>23 back and forth.</p> <p>24 So, for instance, the arrow here between selection</p> <p>25 and searching, you use that user interface to engage</p>

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<p>615</p> <p>1 or items in the item master?</p> <p>2 THE COURT REPORTER: I'm sorry, could you say that</p> <p>3 again, please.</p> <p>4 THE COURT: I agree. Thank you.</p> <p>5 Q Is a vendor associated with the item data for items in the</p> <p>6 item master?</p> <p>7 A It is. The item number in the item master file serves as</p> <p>8 a link to an entry in the vendor item table that identifies the</p> <p>9 vendor. So once you have the item number, you have a link to</p> <p>10 the description in the item master, all the fields that</p> <p>11 describe the item, and that link also gets you the name of the</p> <p>12 vendor and the vendor price agreement data out of the vendor</p> <p>13 item table.</p> <p>14 THE COURT: Is the item master and the vendor item</p> <p>15 table, in your view, the only aspect of the Lawson systems that</p> <p>16 are accused that meets the definition of catalog?</p> <p>17 THE WITNESS: Yes, Your Honor.</p> <p>18 THE COURT: All right.</p> <p>19 Q So together, the item master with the data that you</p> <p>20 identified along with this vendor item table that identifies</p> <p>21 the vendor together, it's your view that that constitutes a</p> <p>22 catalog under the Court's construction?</p> <p>23 A That's correct.</p> <p>24 Q We also have this Punchout procurement system; correct?</p> <p>25 A We do.</p>	<p>617</p> <p>1 A So we've talked about these at a high level. It's really</p> <p>2 time now to define them. So in these first two paragraphs of</p> <p>3 this document, Lawson has incorporated the usage of UNSPSC</p> <p>4 codes which is a standardized way of categorizing items that</p> <p>5 people use in commerce.</p> <p>6 The UNSPSC codes were developed by the United Nations in</p> <p>7 association with Dunn & Bradstreet. The codes have four</p> <p>8 levels: Segment, family, class, and commodity. These levels</p> <p>9 create an item hierarchy and allows the user to search, for</p> <p>10 each level, for items in the item master file.</p> <p>11 Q So there's an example here of this segment, family, class,</p> <p>12 and commodity and a description using that. Can you tell us</p> <p>13 then, so how do you employ these four levels to identify a</p> <p>14 specific item?</p> <p>15 A Sure. So in this UNSPSC classification code, the four</p> <p>16 levels, segment, family, class, and commodity, are each</p> <p>17 represented by a two-digit number. So for the segment, for</p> <p>18 example, the encodings could be 00 through 99. Each of those,</p> <p>19 or most of those anyway, have been predefined to be a market</p> <p>20 segment, segment meaning a large grouping of items, products,</p> <p>21 and services.</p> <p>22 If the encoding is 44, then you can see from the table</p> <p>23 that's the general segment of office equipment. So if you did</p> <p>24 a search for 44000000, you would be looking at items in office</p> <p>25 equipment.</p>
<p>616</p> <p>1 Q And you indicated there's this specialized website that</p> <p>2 Lawson works with its Punchout partners to create such that</p> <p>3 users of the Lawson system that have the Punchout procurement</p> <p>4 module can go out to these special websites and purchase items;</p> <p>5 is that right?</p> <p>6 A Yes.</p> <p>7 Q Do you have an opinion as to whether the catalog data</p> <p>8 available at these Punchout partners that Lawson utilizes also</p> <p>9 meets the definition of the Court's claim term catalog?</p> <p>10 A I believe they do, yes.</p> <p>11 Q We'll be coming back to that; is that right?</p> <p>12 A I'm sure we will.</p> <p>13 THE COURT: Then your opinion of what in the Lawson</p> <p>14 system infringes is not confined only to -- excuse me. Your</p> <p>15 opinion of what in the Lawson system meets the Court's</p> <p>16 definition of catalog is not confined to the item master plus</p> <p>17 the vendor item table?</p> <p>18 THE WITNESS: You are correct, Your Honor. The item</p> <p>19 master and vendor item table would be an instance of a catalog</p> <p>20 within the Lawson system. These Punchout catalogs are</p> <p>21 external. They are an additional instance of catalogs.</p> <p>22 Q Okay. Why don't we go then to page 46 of Plaintiff's</p> <p>23 Exhibit 112, and there's a heading there that says, what are</p> <p>24 UNSPSC codes. You referenced those several times, so why don't</p> <p>25 we see what Lawson has to say with respect to these codes.</p>	<p>618</p> <p>1 Now, that's a lot of items. So it's hierarchical. If you</p> <p>2 add the family designation, two digits there, 00 to 99, you</p> <p>3 narrow it down. So if the code is 4410, you've narrowed it</p> <p>4 from office equipment to office machines. If the code is 4411,</p> <p>5 you've narrowed it within office equipment down to computer</p> <p>6 supplies.</p> <p>7 So now let's take the example 4412 under office equipment.</p> <p>8 We're now narrowing it to office supplies, but we can become</p> <p>9 more specific by adding more digits. So if I add the two-digit</p> <p>10 class, if I added 15, then I'm talking about the type of office</p> <p>11 supplies that are mailing supplies; if the code is 16, writing</p> <p>12 implements. So if my code so far is 441216, I'm talking about</p> <p>13 writing implements.</p> <p>14 If I go down to the commodity level, the full eight</p> <p>15 digits, I get to a finer-grained description of items. So if</p> <p>16 that commodity code is 01, it's mechanical pencils, 02 is black</p> <p>17 stylus pens, 03 is black pens. So if I wanted to search for</p> <p>18 black pens, I could put in the code 44121603, and what I would</p> <p>19 get back is a listing of all of the black pens in the item</p> <p>20 master database from all the vendors that have put item data</p> <p>21 there.</p> <p>22 Q Now --</p> <p>23 THE COURT: Put item data where?</p> <p>24 THE WITNESS: That using vendor catalog load program</p> <p>25 provided by Lawson, catalog items from the vendor has been put</p>

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1 MR. ROBERTSON: I don't know who he's going
2 to question about it.

3 THE COURT: I'm sure he's going to question
4 Dr. Weaver based on what he said. Not because I'm
5 prescient or anything.

6 MR. ROBERTSON: I guess I don't have an
7 objection to that.

8 THE COURT: Well, good then. We solved
9 something.

10 Raise the blinds so that in the morning it
11 will be open.

12 All right. I think that's everything. And
13 you don't expect to finish tomorrow, is that right,
14 Mr. Robertson? You don't expect to finish tomorrow,
15 is that what your situation is?

16 MR. ROBERTSON: I do not, sir. I expect Mr.
17 McDonald might have a half an hour or 45 minutes of
18 cross-examination.

19 THE COURT: If you ask your questions bullet
20 points, 30 minutes is plenty. Once you get beyond
21 that, the expert bets you is generally what happens.

22 All right. Okay. So we're not going on
23 Monday. You're going back on Tuesday. Thank you very
24 much. Hope you feel better, all of you. Don't bring
25 anything else up here.

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2 (The proceedings were adjourned at 5:15 p.m.)

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<p>1188</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 12, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1190</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. You said you wanted to see me 13 before the jury comes in. 14 MR. McDONALD: Yeah, there's basically three issues 15 we wanted to raise. 16 THE COURT: The court reporters always can hear 17 better if you come to the lectern. 18 MR. McDONALD: There's basically three issues that we 19 wanted to raise this morning. One is our third witness in our 20 case that we start today is Ms. Raleigh. 21 THE COURT: Third witness in what? 22 MR. McDONALD: In our case when we start presenting 23 our case today. We have Mr. Richard Lawson first, Mr. 24 Christopherson second, and then Hannah Raleigh was supposed to 25 come back and be third today.</p>
<p>1189</p> <p>1189</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1191</p> <p>1191</p> <p>1 She was supposed to be back last night from New York, 2 and New York is getting hammered real bad by this blizzard. 3 She's trying to get another flight, but her flight is not going 4 to get her here until after the trial day is over today. So 5 we've been trying to work something out with ePlus about what 6 we would do next because we haven't disclosed any exhibits or 7 anything for the next witness. 8 THE COURT: Just call the next witness, the expert or 9 whoever you've got here. There's no magic to the order of 10 putting people on. 11 MR. McDONALD: The next witness we would have 12 actually here is Mr. Lohkamp, calling him back. 13 THE COURT: Good. 14 MR. McDONALD: That's fine. They haven't had a 15 chance to get ready for their cross-examination. 16 THE COURT: They'll be ready. They knew basically 17 what you were going to do anyway. They're not going to do it 18 on your cross-examination; they were going to do redirect, so 19 we're going to reverse things. 20 MR. McDONALD: We do have a deposition of Ms. 21 O'Loughlin on the RIMS prior art issue that we can move up in 22 the order. 23 THE COURT: Is that carefully edited to eliminate the 24 trash? 25 MR. McDONALD: That's being worked on as we speak,</p>

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<p>1468</p> <p>1 back to me with "published" first meaning, to issue</p> <p>2 (printed or otherwise reproduced textual or graphic</p> <p>3 material) for sale, and (2) to make publicly or</p> <p>4 generally known. Those are the first two. And then</p> <p>5 there's a third one, to issue newspapers, books, etc</p> <p>6 and then fourth is to have one's work published.</p> <p>7 And that's very typical of these other</p> <p>8 definitions.</p> <p>9 THE COURT: American Heritage, 4th edition,</p> <p>10 says, No. 1, To prepare an issue (printed material).</p> <p>11 For public distribution or sale. (2) To bring to the</p> <p>12 public attention, announce.</p> <p>13 The Merriam Webster New Edition says, "To</p> <p>14 make generally known, announce publicly." Second one,</p> <p>15 "To produce or release literature, information,</p> <p>16 musical scores or sometimes recordings or art for sale</p> <p>17 to the public."</p> <p>18 The Pocket Oxford American Dictionary, did</p> <p>19 y'all bring these with you or did you stimulate</p> <p>20 business --</p> <p>21 MR. McDONALD: This was stimulated in</p> <p>22 Richmond, Virginia, local economy, Your Honor.</p> <p>23 THE COURT: The first one is "Prepare and</p> <p>24 issue a book, newspaper, piece of music for public</p> <p>25 sale, print something." (2) "Print something in a</p>	<p>1470</p> <p>1 think generally known was in several of the</p> <p>2 dictionaries that you indicated. I think that's more</p> <p>3 appropriate.</p> <p>4 Remember, "published" still has to be read in</p> <p>5 context of the patent, and we're talking about</p> <p>6 electronic data here. So when you take electronic</p> <p>7 data, and you put it in a vendor catalog database,</p> <p>8 you're not making something publicly known, you're</p> <p>9 just taking that data that has been made generally</p> <p>10 known or disclosed by the vendor, and then you're</p> <p>11 loading it into the database.</p> <p>12 Now, who does that loading or how it's</p> <p>13 modified in any way is not relevant to "generally</p> <p>14 known" or "disclose."</p> <p>15 Publicly now would suddenly become another</p> <p>16 non-infringement gotcha that we've been talking about.</p> <p>17 THE COURT: Well, go ahead, Mr. McDonald.</p> <p>18 MR. McDONALD: Okay.</p> <p>19 THE COURT: Anything else?</p> <p>20 MR. McDONALD: Your Honor, just to be clear</p> <p>21 as well, speaking of gotchas, as Mr. Robertson said,</p> <p>22 basically, he's the one that's trying to turn this</p> <p>23 into a gotcha. I'm fine going to the jury on a fair</p> <p>24 and ordinary meaning. He's the one who is trying to</p> <p>25 say, "I can't even present evidence anymore on these</p>
<p>1469</p> <p>1 book, newspaper or journal as to make it generally</p> <p>2 known." (3) "Formally announce to read an edict or a</p> <p>3 marriage ban."</p> <p>4 MR. McDONALD: That last one, I don't think</p> <p>5 we're using that last one about marriage.</p> <p>6 THE COURT: I don't think that works, but</p> <p>7 basically I think the way I've defined "published"</p> <p>8 catches these, doesn't it?</p> <p>9 MR. McDONALD: The problem I have, Your</p> <p>10 Honor, that I don't think it does is when you've got</p> <p>11 to make generally known, I think that should be</p> <p>12 publicly to be consistent with these as well as Dr.</p> <p>13 Weaver and the experts. So I would change the word</p> <p>14 "generally" to "publicly." And then we've got that</p> <p>15 phrase "or to disclose," which doesn't have any sort</p> <p>16 of a public or sale related aspect to it.</p> <p>17 So I would say that should be eliminated</p> <p>18 entirely from it. I think it's very accurate to say</p> <p>19 "published" simply means to make publicly known.</p> <p>20 THE COURT: I'll take those dictionaries, and</p> <p>21 I'll give you back yours, but I'll just take all of</p> <p>22 them and look at them and frame something. I think</p> <p>23 "disclosed" needs to be in there, but I'm not sure.</p> <p>24 MR. ROBERTSON: Your Honor, may I address</p> <p>25 this "publicly" now a new term has been injected? I</p>	<p>1471</p> <p>1 issues of how the accused database, the item master,</p> <p>2 came into being."</p> <p>3 These are clearly facts that are relevant</p> <p>4 here. What if the vendor was the one who had selected</p> <p>5 the desired items and added the information and</p> <p>6 deleted the items and modified? Obviously, that would</p> <p>7 be relevant. So the fact that somebody else does it</p> <p>8 is also relevant to the converse.</p> <p>9 And so he's the one that's trying to do the</p> <p>10 gotcha here and preclude us from even being able to</p> <p>11 present our case to the jury here by saying none of</p> <p>12 this evidence that Lawson wants to present is even</p> <p>13 relevant here. That's where the gotcha is coming in.</p> <p>14 So Mr. Robertson is the one who keeps saying we</p> <p>15 shouldn't use these claim constructions --</p> <p>16 THE COURT: Why should this come in into</p> <p>17 evidence? You want to argue that it's not a catalog</p> <p>18 because the customer of Lawson in the instance where</p> <p>19 it's using a legacy system, for example, has pulled</p> <p>20 from a bunch of catalogs things that it put together,</p> <p>21 and you flipped it into the system when you into the</p> <p>22 Lawson system. And somehow that information doesn't</p> <p>23 constitute information that's published by a vendor</p> <p>24 merely because it's gone through a relocation.</p> <p>25 And that's not what the claim construction</p>

<p>1472</p> <p>1 says. And that's not a fair reading of the patent.</p> <p>2 So maybe he's right that none of this comes in, that</p> <p>3 to the extent it is relevant, it's only marginally</p> <p>4 relevant, and it's too confusing to the jury to have</p> <p>5 to sort through all of this who put the material into</p> <p>6 the system, the structure that you all have</p> <p>7 constructed, that is the Lawson system.</p> <p>8 MR. McDONALD: But we're talking about the</p> <p>9 item master as being the thing that's being accused as</p> <p>10 being multiple catalogs, Your Honor, and I think as a</p> <p>11 fact matter, we should be able to show that doesn't</p> <p>12 satisfy this definition. The definition starts off by</p> <p>13 talking about an organized collection. That's the</p> <p>14 noun here. And then it goes on to say that's why it</p> <p>15 has to be published by a vendor. And that's very</p> <p>16 consistent with the patent. Any other way is</p> <p>17 inconsistent.</p> <p>18 THE COURT: I'm going to tell you now that</p> <p>19 you're not free to argue simply that -- you just</p> <p>20 argued that the only thing that's covered by the claim</p> <p>21 construction is a Sears catalog that is put into the</p> <p>22 system. And if that's what your theory is, you lose.</p> <p>23 And I'm going to find that you lose as a matter of law</p> <p>24 because that isn't what it's all about.</p> <p>25 And I think if that's what you're trying to</p>	<p>1474</p> <p>1 inconsistent --</p> <p>2 THE COURT: Everything that your customers</p> <p>3 look for is something that a vendor sells because what</p> <p>4 happens is when they use your system, your customer</p> <p>5 goes to buy it from the vendor who is selling it to</p> <p>6 them, and a requisition is made, a purchase order is</p> <p>7 made, and it goes to the vendor, and that's a typical</p> <p>8 sale, isn't it? It's a sale purchase. That's what it</p> <p>9 is.</p> <p>10 MR. McDONALD: The point is what's a catalog</p> <p>11 and what's not. That's what I'm talking about, and</p> <p>12 the shopping list is not a catalog. If I come up with</p> <p>13 a list of requisition items that I want to buy, that's</p> <p>14 not a catalog. That's not how these patents use that.</p> <p>15 They call them requisitions. They call them purchase</p> <p>16 orders. They call them something different from a</p> <p>17 catalog. And that's my concern that if we go too far</p> <p>18 on reconstruing the construction, that it's going to</p> <p>19 lead the jury to --</p> <p>20 THE COURT: You reconstruing the</p> <p>21 construction, I think. So anyway I think what I'm</p> <p>22 going to do is instruct the jury. And the question</p> <p>23 then is: On what the ordinary meaning is, do you know</p> <p>24 of any case that says the Court can't instruct them on</p> <p>25 what the ordinary meaning is?</p>
<p>1473</p> <p>1 do, then I think the answer is that Rule 403 keeps</p> <p>2 that whole line of evidence out. If that's what</p> <p>3 you're thinking, forget it, because it ain't going to</p> <p>4 happen. If you argue that in front of the jury, I'm</p> <p>5 going to tell the jury that that isn't permissible and</p> <p>6 I'll sustain a motion to strike it because it never</p> <p>7 was intended to do that.</p> <p>8 We may not have done the best job of claim</p> <p>9 construction here. I don't know. But in any event,</p> <p>10 whatever is going to happen is that we're not going to</p> <p>11 convert this into something that it wasn't and is not</p> <p>12 reasonably intended.</p> <p>13 MR. McDONALD: You have that Markman</p> <p>14 transcript, and if you take a look at that, you'll see</p> <p>15 that I was definitely talking about the issue that we</p> <p>16 have to have a definition that's consistent with the</p> <p>17 patent and consistent with the ordinary meaning of</p> <p>18 catalog that will exclude something like a shopping</p> <p>19 list or a list of products somebody buys instead of</p> <p>20 something somebody sells. That was all on the table</p> <p>21 at the Markman.</p> <p>22 And if we go too far the other way with the</p> <p>23 definition, Your Honor, I think we start grabbing</p> <p>24 things within the catalog definition that would not be</p> <p>25 considered within the ordinary meaning. It would be</p>	<p>1475</p> <p>1 MR. McDONALD: I'm not sure. We'll have to</p> <p>2 look for that, Your Honor. I'm not an aware of any</p> <p>3 case at this point.</p> <p>4 THE COURT: I don't know why it wouldn't be</p> <p>5 appropriate if there's a dispute about it. And you're</p> <p>6 offering Defendant's 371. I assume you did it in good</p> <p>7 faith believing that it was appropriate to do that.</p> <p>8 So I think I'm going to give it. I'm going to look at</p> <p>9 these definitions, if you don't mind loaning me your</p> <p>10 books for the evening.</p> <p>11 Now, the real issue is: Can you ask these</p> <p>12 questions? Why is it that this approach as shown in</p> <p>13 item information changes, which I think Mr. Robertson</p> <p>14 just read into the record in its entirety in the first</p> <p>15 three blocks, I don't know that you read the last</p> <p>16 three -- the last block. It says, "Customer loads new</p> <p>17 info into Lawson database." And then it goes to item</p> <p>18 location, item master, and vendor item. I think</p> <p>19 that's now the whole thing is in the record.</p> <p>20 But what difference does it make about</p> <p>21 whether the vendor changes the information to the new</p> <p>22 electronic format?</p> <p>23 MR. McDONALD: Because we're showing the</p> <p>24 distance between when this thing actually was anything</p> <p>25 that even resembles a catalog at the vendor end and</p>

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<p>1490</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 13, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1492</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. Thank you. 11 MR. McDONALD: Yes, Your Honor. Thank you. 12 THE COURT: Do you need to see me about something 13 before the jury comes in? 14 MR. ROBERTSON: Yes, Your Honor. You had asked us to 15 take a look at those appendices with respect to our motion on 16 this implementation on a customer-by-customer basis. 17 THE COURT: Yeah. 18 MR. ROBERTSON: We have done that, and the reason I 19 raised it, Your Honor, is one of the witnesses that's going to 20 be called this morning is Ms. Hannah Raleigh. You may recall 21 she testified once already. She is involved with Lawson 22 Professional Services that has to do -- that has responsibility 23 for implementation of the Lawson software products, and we're 24 concerned that she's going to be getting into areas in and 25 presenting testimony that Lawson is going to contend are</p>
<p>1491</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1493</p> <p>1 defenses to infringement later that are directly implicated by 2 that interrogatory number 24. 3 What I have provided Your Honor with is the 4 appendices that were referenced in the answers to the 5 interrogatories, the transcript from the March 26th hearing, 6 telephonic hearing on the motion to compel, and the relevant 7 citations to the transcript where this issue came up, and I do 8 want to continue to press the motion, Your Honor. 9 We do think that the answers, even with the 10 appendices, were nowhere near what was called for and what Your 11 Honor directed Lawson to do in response to that. 12 If I might just, Your Honor, you may recall that 13 these appendices that are being referenced were provided to 14 ePlus three months before the motion to compel was presented, 15 and the appendices do not respond to the interrogatory as 16 represented by counsel for Lawson. 17 Indeed, if you look at some of the appendices, for 18 example -- 19 THE COURT: Is A appendix A? 20 MR. ROBERTSON: Yes, sir. Under the tab December 23, 21 2009, response to interrogatory number -- yeah, A is one. 22 THE COURT: March 26th is the first tab, the 23 transcript, and then there's an A behind that. Is that 24 appendix A or not? 25 MR. ROBERTSON: I believe appendix A, Your Honor, is</p>

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<p>1518</p> <p>1 MS. STOLL-DeBELL: I don't know, Bill, if you can</p> <p>2 highlight that item column.</p> <p>3 Q Can you tell us what that is, Mr. Christopherson?</p> <p>4 A We've been referring to that's kind of the Lawson item</p> <p>5 number or the customer part number.</p> <p>6 Q Is that something that -- well, who creates that item</p> <p>7 number?</p> <p>8 A The customer does.</p> <p>9 Q Does it ever come from the vendor?</p> <p>10 A No, it does not.</p> <p>11 Q Let's go on to the next column. It has a heading</p> <p>12 description?</p> <p>13 A Uh-huh.</p> <p>14 Q What is that?</p> <p>15 A That's what we've been referring to as the item</p> <p>16 description.</p> <p>17 Q And then what is the column, the next column over? I</p> <p>18 think it says tracked. Can you explain what that is?</p> <p>19 A Yes. That has to do with if -- well, in the item master,</p> <p>20 we have two types of items. We have those that we don't keep</p> <p>21 in stock, what we call nonstock items. Those are items that</p> <p>22 when we need them, we always have to go purchase them.</p> <p>23 Then we have our stock items and whether or not we're</p> <p>24 tracking the stock of those items, thus tracked, and that has</p> <p>25 to do with tracking that order and -- not the order, but rather</p>	<p>1520</p> <p>1 that you may see.</p> <p>2 Q What kinds of items do you see here?</p> <p>3 A Clearly, I've got some, looks like -- it's a little bit</p> <p>4 fuzzy in mine also, Your Honor, so --</p> <p>5 MS. STOLL-DeBELL: Bill, could we blow up some of</p> <p>6 those maybe, blow up that description column or somehow make</p> <p>7 those bigger and easier to see?</p> <p>8 Q Is that better?</p> <p>9 A Sure. It looks like there's some sort of a surgical tape</p> <p>10 dispenser, different amounts on each one of those, ten or</p> <p>11 20 yards, some strips. Those are probably Band-Aids, or we</p> <p>12 might refer to them as Band-Aids, but obviously they don't in</p> <p>13 this case. Some needles, varying lengths.</p> <p>14 Q Looks like maybe shoe covers?</p> <p>15 A Yes, some shoe covers down there, some surgical masks,</p> <p>16 there's some gloves, there's a gown, there's a scalpel, another</p> <p>17 type of tape. There's some syringes. So a wide selection of</p> <p>18 things, some related, some not related. The shunt, probably</p> <p>19 not related to the shoe covers, for instance.</p> <p>20 Q Is item master organized by related items?</p> <p>21 A You know, if you look at this, you've got items numbers</p> <p>22 going 1,007, -8, -9, -10, -11, -12, and it's -- I haven't</p> <p>23 looked at them all, but they appear to be almost in</p> <p>24 alphabetical order. I see now where 1,026 is not there, but as</p> <p>25 I said --</p>
<p>1519</p> <p>1 the inventory and making sure that we're always going to have</p> <p>2 enough on hand.</p> <p>3 This particular case, you've got medical instruments. You</p> <p>4 want to make sure that -- you got someone going into surgery,</p> <p>5 you've got the equipment, the supplies that you need for that</p> <p>6 surgery before that surgery actually starts or the medical</p> <p>7 procedure.</p> <p>8 Q Where does the tracking information come from?</p> <p>9 A Tracking information, that's housed within inventory</p> <p>10 control or IC.</p> <p>11 Q The screen shot we're looking at here, where did the item</p> <p>12 description information come from?</p> <p>13 A The item description can come from the customer.</p> <p>14 Generally they'll put it in terms that they understand. In</p> <p>15 particular, a lot of the hospitals will have terms that are</p> <p>16 very similar between hospitals, between locations.</p> <p>17 Take nurses today are very short-supplied within the US,</p> <p>18 and as a result, it's quite often that nurses are having to go</p> <p>19 from hospital to hospital even in different companies. They'll</p> <p>20 work different shifts different places. They need to know</p> <p>21 basically standardized ways of the way things are being</p> <p>22 identified.</p> <p>23 Q Is this a typical list of items that you see in an item</p> <p>24 master database?</p> <p>25 A For medical unit, yes. This would be some of the items</p>	<p>1521</p> <p>1 THE COURT: What was the question?</p> <p>2 MS. STOLL-DeBELL: The question was, is item master</p> <p>3 organized by related items.</p> <p>4 THE COURT: Yes or no?</p> <p>5 THE WITNESS: No, it's not.</p> <p>6 Q Are items in item master organized by vendor?</p> <p>7 A No, they are not.</p> <p>8 Q Why not?</p> <p>9 A Vendor doesn't come into the item master or the ITEMMAST</p> <p>10 table at all.</p> <p>11 Q Is this customer's item master database ever published by</p> <p>12 a vendor?</p> <p>13 A Can you say that again?</p> <p>14 Q Is a customer's item master database ever published by a</p> <p>15 vendor?</p> <p>16 MR. ROBERTSON: Objection, Your Honor, calls for</p> <p>17 legal conclusion.</p> <p>18 MS. STOLL-DeBELL: It does not, Your Honor. I'm</p> <p>19 asking him to use the ordinary meanings of those terms. They</p> <p>20 are not claim terms. I'm just asking for his understanding</p> <p>21 based upon his experience working at Lawson and working with</p> <p>22 these products.</p> <p>23 MR. ROBERTSON: Your Honor knows that there's a</p> <p>24 dispute with respect to this, and there's a --</p> <p>25 THE COURT: Maybe we need to tell the jury what the</p>

<p>1522</p> <p>1 ordinary claim term is -- I mean what the ordinary meaning is, 2 and he needs to explain what he understands the ordinary 3 meaning is. Or maybe I need to do it. Are you finished, Mrs. 4 Stoll-DeBell?</p> <p>5 MS. STOLL-DeBELL: We can ask Mr. Christopher --</p> <p>6 THE COURT: He doesn't define what the ordinary 7 meaning is, does he? He defines what his meaning is. So I 8 define -- should I go ahead and tell the jury what the ordinary 9 meaning is now if that's what the question is?</p> <p>10 MS. STOLL-DeBELL: Your Honor, I think it's 11 appropriate to let him answer with his understanding. He works 12 with these products every day. He works with customers. He 13 already laid his foundation for that, and I'm just asking --</p> <p>14 THE COURT: If he gives the definition of what his 15 understanding is but it's not what the usual meaning is, it's 16 not the same. Then it confuses the jury, doesn't it?</p> <p>17 MS. STOLL-DeBELL: I think it's up to the jury to 18 decide what the ordinary meaning is, and we've already heard 19 testimony from the witnesses what their understanding of that 20 ordinary meaning is, and now we're going to ask Mr. 21 Christopherson what his understanding is. And I believe it's 22 up to the jury to ultimately decide what that is.</p> <p>23 THE COURT: Who testified to that?</p> <p>24 MS. STOLL-DeBELL: Dr. Weaver.</p> <p>25 THE COURT: No. He didn't testify what published by</p>	<p>1524</p> <p>1 object on that. This gentlemen's supplied no report, no 2 Rule 26 disclosure. I think it's inappropriate.</p> <p>3 THE COURT: Well, it is his opinion, I think; isn't 4 it?</p> <p>5 MS. STOLL-DeBELL: I think it's a fact.</p> <p>6 THE COURT: It can't be a fact. It's his opinion as 7 to what the facts are; right?</p> <p>8 MS. STOLL-DeBELL: It's using the definition he --</p> <p>9 THE COURT: Do you want it in as an opinion, because 10 I'll let it in.</p> <p>11 MS. STOLL-DeBELL: Yes, then.</p> <p>12 THE COURT: It's not going to come in just as a fact. 13 It's his opinion.</p> <p>14 MS. STOLL-DeBELL: Then, yes.</p> <p>15 THE COURT: There are two kinds of people who can 16 give opinions. One are experts. He's not qualified as an 17 expert, so he's not giving an opinion as an expert.</p> <p>18 Lay people, such as you and me, can give opinions 19 about matters as well. They can do that if it will help you 20 decide a fact that is in issue or if it will help you 21 understand the evidence and if it is based reasonably on their 22 perception.</p> <p>23 It is up to you to decide whether, in listening to 24 the testimony, his opinion on this matter is based reasonably 25 on his perception, and if you -- and you can give it such</p>
<p>1523</p> <p>1 a vendor meant.</p> <p>2 MS. STOLL-DeBELL: I believe he did, Your Honor.</p> <p>3 THE COURT: He was asked a different question. I'm 4 going to tell the jury what the definition is. That's enough.</p> <p>5 Published by a vendor is used in the definition of the claim 6 term catalog, product catalog. Published simply means to make 7 generally known. Published by a vendor simply means that at 8 some point in time, a vendor, such as a supplier, a 9 manufacturer, a distributor has made generally known or has 10 disclosed an organized collection of items or associated 11 information, preferably but not necessarily including a part 12 number, price, catalog number, vendor name, vendor ID, textual 13 description of the item and images relating to the item.</p> <p>14 That's what the general meaning of the term is. I'll have that 15 in writing for you.</p> <p>16 Q Okay, Mr. Christopherson, using that definition of 17 published by a vendor, I'm going to ask my question again and 18 ask that you answer it using that definition.</p> <p>19 THE COURT: You are going to ask him for his opinion; 20 is that what you are doing?</p> <p>21 MS. STOLL-DeBELL: I don't think it's an opinion, but 22 if it is, it's a lay opinion based upon his experience and what 23 he's seen and what he does in his job.</p> <p>24 MR. ROBERTSON: Your Honor, I think it's still 25 calling for a legal conclusion from a lay witness, so I would</p>	<p>1525</p> <p>1 weight as you choose or none if you choose which is an 2 instruction I'll tell you about later. Do you want to ask him 3 what his opinion is?</p> <p>4 MS. STOLL-DeBELL: Yes.</p> <p>5 Q Using the definition the Court just gave for published by 6 a vendor, is the customer's item master database ever published 7 by a vendor?</p> <p>8 A If you looked at the entire --</p> <p>9 THE COURT: I think the answer is yes or no to start 10 with, and then if she wants you to explain it, she can, but the 11 jury will understand your opinion better if you preface it by 12 giving them the guidepost from which to make the assessment if 13 there's any further explanation she asks you for. Yes or no?</p> <p>14 THE WITNESS: No.</p> <p>15 THE COURT: Do you want to ask him to explain that?</p> <p>16 MS. STOLL-DeBELL: Yes.</p> <p>17 Q Please explain your no answer.</p> <p>18 A Sure. Looking at the screen that we were just talking 19 about, item number, a vendor could not have published that 20 because they never had access to it. That's from the customer. 21 Tracked, that's another one where the vendors would love to 22 have the customers have everything in stock. That comes at a 23 cost to the customer, and they don't want to do that. They may 24 have items that are low turnover, they only use maybe once or 25 twice a year.</p>

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<p>1526</p> <p>1 There's many other fields that are in the item master.</p> <p>2 We've talked about some of them. You know, catalog number, the</p> <p>3 vendor's part number or its number, the manufacturer number,</p> <p>4 clearly those came from the -- the manufacturer came from the</p> <p>5 manufacturer, and the vendor number came from the vendor, and</p> <p>6 those were in their catalogs at some point in time. The</p> <p>7 description generally --</p> <p>8 THE COURT: Those did come from a vendor?</p> <p>9 THE WITNESS: What did come from --</p> <p>10 THE COURT: Those that you just testified to --</p> <p>11 THE WITNESS: Did come from the vender, but --</p> <p>12 THE COURT: So they were published by a vendor?</p> <p>13 THE WITNESS: Those particular items, right.</p> <p>14 THE COURT: Thank you.</p> <p>15 THE WITNESS: Where I was differentiating, she was</p> <p>16 saying the item master, that, in itself, all the fields were</p> <p>17 not, and that's why I was really struggling with the yes or no,</p> <p>18 Your Honor.</p> <p>19 THE COURT: I know, but the jury have a right to</p> <p>20 understand what people's opinions are before they start talking</p> <p>21 about them.</p> <p>22 THE WITNESS: I appreciate that.</p> <p>23 THE COURT: Then they understand what they're being</p> <p>24 told.</p> <p>25 Q Do a lot of fields come from the customer in item master?</p>	<p>1528</p> <p>1 Q Do Lawson's customers maintain the item master database in</p> <p>2 private?</p> <p>3 A Yes.</p> <p>4 MR. ROBERTSON: Objection, relevancy, Your Honor.</p> <p>5 MS. STOLL-DeBELL: Your Honor, it goes to --</p> <p>6 THE COURT: What does that have to do with anything?</p> <p>7 MS. STOLL-DeBELL: I think it goes to whether it's</p> <p>8 published by a vendor, whether it meets your definition --</p> <p>9 THE COURT: No, I don't think so. Objection</p> <p>10 sustained. Disregard the answer, please.</p> <p>11 MS. STOLL-DeBELL: Can we go to, Bill, PX-363, and</p> <p>12 I'm going to want to see page that ends in 942297.</p> <p>13 MR. ROBERTSON: I'm sorry, Ms. Stoll-DeBell, what</p> <p>14 page?</p> <p>15 THE COURT: What exhibit are we on?</p> <p>16 THE CLERK: 363.</p> <p>17 MS. STOLL-DeBELL: Actually I need to get you a</p> <p>18 better page.</p> <p>19 Q Let's go to the page ending in 942297.</p> <p>20 THE COURT: 297, the last three digits?</p> <p>21 MS. STOLL-DeBELL: Yes.</p> <p>22 Q What is this, Mr. Christopherson?</p> <p>23 A That is the login screen to get into the Lawson system</p> <p>24 requiring a user name and a password.</p> <p>25 Q So when a customer or when anyone wants to use Lawson</p>
<p>1527</p> <p>1 A Most of the fields.</p> <p>2 MR. ROBERTSON: Object to the form of the question;</p> <p>3 vague, ambiguous as to a lot of fields.</p> <p>4 Q Do most of the fields in item master come from the</p> <p>5 customer?</p> <p>6 MR. ROBERTSON: Same objection, Your Honor. I mean,</p> <p>7 if we want to be specific, there's hundred of fields.</p> <p>8 Q Mr. Christopherson, are there hundreds of fields in item</p> <p>9 master?</p> <p>10 A No, there's not.</p> <p>11 Q How many fields are in item master?</p> <p>12 A I don't recall, but there's under 100.</p> <p>13 THE COURT: So there are a lot, I mean between 0 and</p> <p>14 100?</p> <p>15 THE WITNESS: Yes, Your Honor.</p> <p>16 THE COURT: Is it closer to a hundred than it is to</p> <p>17 zero, or close to zero than it is to a hundred?</p> <p>18 THE WITNESS: It's probably pretty close to 50</p> <p>19 roughly.</p> <p>20 THE COURT: So there are 50. You can handle that on</p> <p>21 cross-examination, Mr. Robertson. Overruled.</p> <p>22 MR. ROBERTSON: Thank you, Your Honor.</p> <p>23 Q Would you say a majority of those 50 come from the</p> <p>24 customer?</p> <p>25 A I would say from the customer it is clearly a majority.</p>	<p>1529</p> <p>1 software, do they need to have a user name and password?</p> <p>2 MR. ROBERTSON: Objection, Your Honor, relevancy.</p> <p>3 MS. STOLL-DeBELL: It goes to his opinion, support</p> <p>4 for his opinion as to whether item master is -- meets the</p> <p>5 definition of catalog as defined --</p> <p>6 THE COURT: I don't understand why, the fact that</p> <p>7 somebody needs a password to get in and use it.</p> <p>8 MS. STOLL-DeBELL: I think it goes to whether item</p> <p>9 master is made generally known or not.</p> <p>10 THE COURT: The issue is not whether item master is</p> <p>11 made generally known. It's whether the things that are listed</p> <p>12 in item master are made generally known, isn't it?</p> <p>13 MS. STOLL-DeBELL: Well, I think --</p> <p>14 THE COURT: The issue is what's in the item master,</p> <p>15 not whether item master is made generally known as I understand</p> <p>16 the way you all have tried the case, so objection sustained.</p> <p>17 Q For a user to gain access to see what information is in</p> <p>18 item master, do they need to use login credentials as shown on</p> <p>19 this screen?</p> <p>20 MR. ROBERTSON: Same objection, Your Honor.</p> <p>21 THE COURT: It may be admissible for a different</p> <p>22 purpose. Besides that, Dr. Weaver has already testified about</p> <p>23 putting in the user name that says Lawson, and then he said, we</p> <p>24 put in our password. So it may be appropriate, but it's not</p> <p>25 appropriate for -- the previous question wasn't. All right,</p>

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<p>1530</p> <p>1 overruled.</p> <p>2 Q Do you need me to ask that again?</p> <p>3 A Yes, please.</p> <p>4 Q In order for a user or anyone to gain access and see what</p> <p>5 information is in the item master database, do they need to</p> <p>6 enter a user name and password?</p> <p>7 A Yes, at a minimum.</p> <p>8 Q Okay, I'm going to change topics slightly,</p> <p>9 Mr. Christopherson, and I want to talk about how item</p> <p>10 information is loaded into the customer's Lawson databases.</p> <p>11 Are there different ways that item information can be loaded</p> <p>12 into the item master database?</p> <p>13 A Yes, there are.</p> <p>14 Q What are those different ways at a high level?</p> <p>15 A You start with the most basic which would be just key in</p> <p>16 the items. Someone such as a buyer for an organization working</p> <p>17 in the purchasing department could just sit in inventory</p> <p>18 screens and just type in all the required fields. That would</p> <p>19 be the easiest way, particularly if you are just entering in</p> <p>20 one or two items.</p> <p>21 Q So is it safe to call that a manual entry of item</p> <p>22 information?</p> <p>23 A Sure.</p> <p>24 Q Are there tools that Lawson offers that can be used to</p> <p>25 import information into the database?</p>	<p>1532</p> <p>1 court, and the objection has been overruled, and I'm going to</p> <p>2 allow questioning, but, Mr. Robertson is not going to stand up</p> <p>3 and object to every question about this particular</p> <p>4 demonstrative exhibit because it would then interrupt the flow</p> <p>5 of your hearing and understanding, but his objection is</p> <p>6 preserved under the terms previously articulated yesterday, Mr.</p> <p>7 Robertson.</p> <p>8 MR. ROBERTSON: Thank you, sir.</p> <p>9 Q Okay, Mr. Christopherson, can you see that?</p> <p>10 A Yes, I can.</p> <p>11 Q Does this describe essentially a three-step process for</p> <p>12 loading item information into the customer's Lawson database?</p> <p>13 A Yes, it does.</p> <p>14 Q What is the first step? Does it have a nickname that you</p> <p>15 use to identify this first step?</p> <p>16 A Sure. In fact, all three steps, collectively we just call</p> <p>17 that the ETL process, and that's very standard within the</p> <p>18 computer industry.</p> <p>19 Q E stand for?</p> <p>20 A E stands for extraction.</p> <p>21 Q What does T stand for?</p> <p>22 A Transformation or transform.</p> <p>23 Q And what about L?</p> <p>24 A Load.</p> <p>25 Q Let's talk about the extraction step. Where is that shown</p>
<p>1531</p> <p>1 A Absolutely. There's a PO 536.</p> <p>2 Q Are there third-party tools that can be used --</p> <p>3 THE COURT: PO or field?</p> <p>4 THE WITNESS: PO 536.</p> <p>5 THE COURT: And that is a what?</p> <p>6 THE WITNESS: We've referred to it as, I think, about</p> <p>7 three different ways so far in court, but it's a way to load</p> <p>8 vendor agreements was one it's been called, a catalog load, I</p> <p>9 think or something very similar to that.</p> <p>10 THE COURT: All right.</p> <p>11 THE WITNESS: Kind of a couple different names.</p> <p>12 Q Are there third-party party tools that can be used to load</p> <p>13 item information into the item master database?</p> <p>14 A Sure. You could use the SQL tools -- structure query</p> <p>15 language is what SQL stands for -- provided by the database</p> <p>16 providers, so Oracle or IBM for DB-2, for instance.</p> <p>17 Q Did you create a demonstrative exhibit that will help</p> <p>18 explain the process that's used to load item information into</p> <p>19 the item master database?</p> <p>20 A Yes, I did.</p> <p>21 MS. STOLL-DeBELL: Bill, can we put that up, please.</p> <p>22 MR. ROBERTSON: I'm just going object for the record</p> <p>23 on this. This is the demonstrative we talked about yesterday.</p> <p>24 I understand the Court's ruling.</p> <p>25 THE COURT: Yes, I've already dealt with this out of</p>	<p>1533</p> <p>1 on this demonstrative?</p> <p>2 A Very first step.</p> <p>3 Q And you can actually maybe even touch it and put a little</p> <p>4 arrow maybe.</p> <p>5 THE CLERK: What is the number of this exhibit?</p> <p>6 THE COURT: It's not. It's a demonstrative.</p> <p>7 THE CLERK: Thank you.</p> <p>8 Q Tell us how the extraction step works.</p> <p>9 A The extraction step, basically that's the vendor. The</p> <p>10 customer will ask for the items that they want or maybe the</p> <p>11 entire catalog. That catalog is generally today going to be</p> <p>12 housed in a database at the vendor's site. Could also be a CD</p> <p>13 or DVD.</p> <p>14 They need to get that data from the vendor's system</p> <p>15 extracted into some form, email message or a flat file -- when</p> <p>16 I say flat file, I mean CSV file -- and send that over to the</p> <p>17 customer.</p> <p>18 Q And then the next step is the transformation step?</p> <p>19 A Transformation, correct.</p> <p>20 Q Is that shown in the middle box of this slide?</p> <p>21 A That's correct. That's this one.</p> <p>22 Q Looks like there are sort of four sub steps that are a</p> <p>23 part of that?</p> <p>24 A Correct.</p> <p>25 Q Okay. What is the first sub step that is part of the</p>

<p>1534</p> <p>1 transformation process?</p> <p>2 A So you get the file from the vendor, and now you're going</p> <p>3 to go through and select what do you really want in your item</p> <p>4 master. Just because you negotiated prices on a hundred items,</p> <p>5 you may not want actually the hundred loaded. You may only</p> <p>6 want 80. Maybe it's 99. Maybe it's all 100. Or the vendor</p> <p>7 sent you the entire catalog, and you may not want to load that</p> <p>8 entire catalog. You go through and select what you want out of</p> <p>9 that, identify those that you really want to keep and continue</p> <p>10 on.</p> <p>11 Q Do you encourage your customers to select all of the items</p> <p>12 that a vendor may send as part of the extraction step?</p> <p>13 MR. ROBERTSON: Objection, lacks foundation.</p> <p>14 MS. STOLL-DeBELL: It doesn't, Your Honor. I think</p> <p>15 he already testified at length actually about all of his</p> <p>16 customer interactions as part of his job.</p> <p>17 THE COURT: Well, are you asking him has he ever, or</p> <p>18 are you asking has any of Lawson's sales force ever?</p> <p>19 MS. STOLL-DeBELL: I'm asking him. Does he encourage</p> <p>20 customers.</p> <p>21 THE COURT: And what relevance is that?</p> <p>22 MS. STOLL-DeBELL: I think he works with Lawson's</p> <p>23 customers.</p> <p>24 THE COURT: I know that.</p> <p>25 MS. STOLL-DeBELL: Okay, and so it goes to whether</p>	<p>1536</p> <p>1 Q So you are familiar with Lawson's policies?</p> <p>2 A Correct.</p> <p>3 Q Is it Lawson's policy to encourage customers to load all</p> <p>4 of the item information they receive from a vendor into the</p> <p>5 item master database?</p> <p>6 MR. ROBERTSON: Objection, relevancy, Your Honor.</p> <p>7 THE COURT: Overruled.</p> <p>8 A No, it's not.</p> <p>9 Q What does Lawson encourage its customers to do?</p> <p>10 A When a customer comes up with that sort of an idea, myself</p> <p>11 personally and actually other members of my team, because it's</p> <p>12 not always me interacting with the customers, but obviously</p> <p>13 I've got --</p> <p>14 THE COURT: That disqualifies the answer because he's</p> <p>15 now -- he was asked, and the answer is nonresponsive. He was</p> <p>16 asked about whether there's a policy and is there a policy. If</p> <p>17 he does it, that doesn't make it a policy, and the fact that</p> <p>18 maybe one or two other people may do it doesn't make it a</p> <p>19 policy.</p> <p>20 A policy is something that's adopted by the company,</p> <p>21 and either they have the policy or they don't have the policy,</p> <p>22 or -- and then if you've got another issue, you can get into</p> <p>23 that, but policies -- he's disqualified himself from answering</p> <p>24 that question with the policy because he said it's based on his</p> <p>25 practice.</p>
<p>1535</p> <p>1 the item master database is -- meets the definition of catalog</p> <p>2 as set forth by the Court.</p> <p>3 THE COURT: So it's offered -- is what his practice</p> <p>4 is offered to whether or not Lawson's product meets the</p> <p>5 definition?</p> <p>6 MS. STOLL-DeBELL: Yes, and how Lawson talks with its</p> <p>7 customers and how it instructs its customers to use --</p> <p>8 THE COURT: He said he hadn't got a foundation. You</p> <p>9 asked him to testify about his own personal practice, and it's</p> <p>10 not -- it's of marginal relevance, but it's confusing and</p> <p>11 leaves open the door to a lot of other responses that will</p> <p>12 just, that would delay the trial, confuse the jury, and make a</p> <p>13 difficult situation for the jury already more difficult. So</p> <p>14 I'm going to sustain the objection for lack of foundation.</p> <p>15 Q Mr. Christopherson, are you familiar in your job with</p> <p>16 Lawson's practices and its instructions to its customers on how</p> <p>17 to load item information into the item master database?</p> <p>18 MR. ROBERTSON: Objection, Your Honor.</p> <p>19 THE COURT: The question is -- what is your objection</p> <p>20 to that question?</p> <p>21 MR. ROBERTSON: Relevancy.</p> <p>22 THE COURT: It's what he does. Overruled. She's</p> <p>23 trying to lay the foundation to which you objected, I think.</p> <p>24 MS. STOLL-DeBELL: Yes, Your Honor.</p> <p>25 A Yes, I am.</p>	<p>1537</p> <p>1 Q Mr. Christopherson, are you aware of the policy that</p> <p>2 Lawson has regarding selecting item information to load into</p> <p>3 the item master database?</p> <p>4 A Yes.</p> <p>5 Q Can you answer the question about what is that policy?</p> <p>6 THE COURT: Just what is the policy.</p> <p>7 A The policy is that we will first ask the customer why do</p> <p>8 you want to do that. We want to establish what the</p> <p>9 requirements are. Inevitably what we find out --</p> <p>10 THE COURT: No. You're going to have to take hold of</p> <p>11 the examination, because we have -- this kind of testimony,</p> <p>12 self-starting, rambling testimony creates all kinds of</p> <p>13 problems, and we're in a question that has been objected to,</p> <p>14 Mrs. Stoll-DeBell, and he was asked about the policy.</p> <p>15 He said what the policy was, and then he goes on and</p> <p>16 gives a lot of other information, and that isn't responsive to</p> <p>17 the question, and it doesn't give Mr. -- and the reason for all</p> <p>18 this is that Mr. Robertson, your opponent, has the right to</p> <p>19 object to a question, and if the witness is self-animating</p> <p>20 everything, he doesn't have that opportunity and we have to</p> <p>21 move to strike the testimony, and then we have to ask the jury</p> <p>22 to do the difficult thing and disregard that which has been</p> <p>23 said. So let's get hold of it.</p> <p>24 Now, Mr. Christopherson, listen to the question. You</p> <p>25 answer the question. Just answer the question. Don't</p>

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<p>1538</p> <p>1 elaborate on it, and then Ms. Stoll-DeBell, if she wants more</p> <p>2 information, will ask you another question on that or another</p> <p>3 topic; okay?</p> <p>4 THE WITNESS: Yes, sir.</p> <p>5 Q Is Lawson's policy to instruct its customers to only load</p> <p>6 the item information for those items that it's going to</p> <p>7 actually use or purchase?</p> <p>8 A Yes.</p> <p>9 Q The second sub step on this demonstrative says, adding</p> <p>10 additional item information. What additional item information</p> <p>11 can be added in this step?</p> <p>12 A The item number that the customer would be using, that's</p> <p>13 one. Whether or not there's going to be tracking, if there's</p> <p>14 stock or nonstock items, what its inventory levels might be,</p> <p>15 additional user fields that exist, UNSPSC codes, other category</p> <p>16 codes.</p> <p>17 Q What about, are there classification fields within the</p> <p>18 item master database?</p> <p>19 A Correct.</p> <p>20 Q What classification fields are there?</p> <p>21 A The classification fields, I'm not sure now which</p> <p>22 classification fields you are talking about.</p> <p>23 Q Are there inventory classifications fields?</p> <p>24 A Yes.</p> <p>25 Q Are there purchasing classifications fields?</p>	<p>1540</p> <p>1 A It's modified for usually two purposes. One, if the</p> <p>2 description is greater than 30 characters, the field only holds</p> <p>3 30 characters, and you want to have something that reasonably</p> <p>4 describes the item that your users would know is the item that</p> <p>5 you are trying to purchase or requisition on.</p> <p>6 But also what we'll have, as I said earlier, is many of</p> <p>7 the institutions or the customers will actually come up with</p> <p>8 standard terminology for the items to help -- they can do</p> <p>9 searches quicker, and it helps their employees as they move</p> <p>10 around in the organization.</p> <p>11 Q What about price, is that a modified information?</p> <p>12 A The price is typically going to come from --</p> <p>13 THE COURT: Yes or no?</p> <p>14 THE WITNESS: It's not modified, no.</p> <p>15 Q Can it be modified?</p> <p>16 MR. ROBERTSON: Objection, Your Honor. The witness</p> <p>17 has answered the question, no, it's not modified. I think it's</p> <p>18 an improper question.</p> <p>19 MS. STOLL-DeBELL: I asked can it be.</p> <p>20 MR. ROBERTSON: What is the relevance then, Your</p> <p>21 Honor?</p> <p>22 THE COURT: If it's not ever, whether it can be or</p> <p>23 not seems to me to be irrelevant. Sustained.</p> <p>24 Q Mr. Christopherson, is it ever modified?</p> <p>25 MR. ROBERTSON: Objection, Your Honor.</p>
<p>1539</p> <p>1 A Correct.</p> <p>2 Q Are those Lawson-specific fields?</p> <p>3 A Yes.</p> <p>4 Q That do not come from a vendor?</p> <p>5 A Correct, they do not.</p> <p>6 Q Are there any other Lawson-specific fields that you can</p> <p>7 think of right now that would be added as part of this step?</p> <p>8 A There's also some user numerical fields.</p> <p>9 Q The next sub step says, deletes item information?</p> <p>10 A Correct.</p> <p>11 Q What item information is deleted here?</p> <p>12 A It may be the entire line item meaning I don't want that</p> <p>13 item at all. It may be, for instance, they may have sent</p> <p>14 photos. The customer may not want photos loaded into the</p> <p>15 system. That requires space and band width. They may delete</p> <p>16 that.</p> <p>17 Q The last sub step that's listed on this slide is modifies</p> <p>18 item information. What item information is modified?</p> <p>19 A Frequently it's the item description.</p> <p>20 Q And is it modified as you described earlier to get a</p> <p>21 standardized description name?</p> <p>22 MR. ROBERTSON: Objection to the characterization of</p> <p>23 the witness's testimony.</p> <p>24 THE COURT: I don't think he said that.</p> <p>25 Q Why is it modified?</p>	<p>1541</p> <p>1 THE COURT: Wait a minute. I've got to deal with a</p> <p>2 contempt problem here. I'm in contempt. I forgot to put that</p> <p>3 thing --</p> <p>4 MS. STOLL-DeBELL: I thought you were going to say</p> <p>5 I'm in contempt, Your Honor. I was a little worried there for</p> <p>6 a minute.</p> <p>7 THE COURT: All right. Sorry. Nobody can be</p> <p>8 listening and paying attention to what you're doing while I was</p> <p>9 in contempt which is why I keep these things out of the</p> <p>10 courtroom. I'm terribly sorry.</p> <p>11 Ask your question again. Don't answer, please, sir,</p> <p>12 because there's obviously going to be an objection. Now with</p> <p>13 my contempt purged, let's go ahead.</p> <p>14 MS. STOLL-DeBELL: Let me back up and ask this a</p> <p>15 different way.</p> <p>16 THE WITNESS: Sure.</p> <p>17 Q The price information that is put into the item master</p> <p>18 database, is that a public list price that the vendor sells the</p> <p>19 item for?</p> <p>20 MR. ROBERTSON: Objection, relevancy.</p> <p>21 MS. STOLL-DeBELL: Your Honor, this goes to, again,</p> <p>22 whether the information in item master is published by a</p> <p>23 vendor, whether this price field specifically is generally</p> <p>24 available or not.</p> <p>25 THE COURT: How does he know that? That's something</p>

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<p style="text-align: right;">1542</p> <p>1 that this record testified -- the testimony on this record is</p> <p>2 that whatever prices are set are between the vendor and the</p> <p>3 Lawson customer, and it may be sometimes they are and sometimes</p> <p>4 they aren't, depending upon what goes on is the testimony. So</p> <p>5 how can he know that? I don't understand how he can even</p> <p>6 answer the question because he's got how many, 300, 400</p> <p>7 customers?</p> <p>8 MS. STOLL-DeBELL: More than that. May I lay a</p> <p>9 foundation?</p> <p>10 THE COURT: More than that, okay, I'm sorry. I</p> <p>11 didn't mean to diminish the size of the company's business, but</p> <p>12 how many? Thousands of customers?</p> <p>13 Q How many customers does Lawson have for these products?</p> <p>14 A For these specific products, I couldn't give you a firm</p> <p>15 answer on that.</p> <p>16 THE COURT: It's so many he doesn't even know, and</p> <p>17 you are asking him to say what happens in situations -- how do</p> <p>18 you turn these things off? Consign it to the office, please.</p> <p>19 Third contempt yields a prison sentence. I am sorry.</p> <p>20 Sustained.</p> <p>21 Q After this information is transformed, it looks like the</p> <p>22 next step says, customer loads new info into the Lawson</p> <p>23 database?</p> <p>24 MR. ROBERTSON: Objection. It's leading, Your Honor.</p> <p>25 THE COURT: She just describing what's on the slide.</p>	<p style="text-align: right;">1544</p> <p>1 it's generally known and whether item master --</p> <p>2 THE COURT: Whether what's generally known?</p> <p>3 MS. STOLL-DeBELL: The information in item master as</p> <p>4 it has been loaded in.</p> <p>5 THE COURT: Whether the contents of item master are</p> <p>6 generally known doesn't have anything to do with this case.</p> <p>7 It's whether the information that goes into item master is</p> <p>8 generally known that we're litigating, I think. Objection</p> <p>9 sustained. It's confusing in addition to the extent it has</p> <p>10 marginal relevance.</p> <p>11 Q We're going to switch topics.</p> <p>12 A Okay.</p> <p>13 Q Mr. Christopherson, have you watched the recorded</p> <p>14 demonstrations that Dr. Weaver did showing the functionality of</p> <p>15 Lawson's accused software?</p> <p>16 A Yes.</p> <p>17 Q Let's pull up PX-363.</p> <p>18 MR. ROBERTSON: I'm going object to this line of</p> <p>19 questioning if we're going to be commenting -- we're going to</p> <p>20 have a witness comment on the demonstrations that an expert has</p> <p>21 performed. It's inappropriate lay witness testimony.</p> <p>22 THE COURT: It seems to me like maybe it offends the</p> <p>23 lay witness provision, depending upon what it is, because the</p> <p>24 lay witness provision explicitly says that you can't garb lay</p> <p>25 witness opinion in -- I mean expert opinion in lay witness garb</p>
<p style="text-align: right;">1543</p> <p>1 She didn't get a question out yet. Okay, now ask the question</p> <p>2 again.</p> <p>3 Q Is the last step on this slide to load new information</p> <p>4 into the Lawson database?</p> <p>5 A Yes.</p> <p>6 Q And is the information that is loaded into the Lawson</p> <p>7 database the information that was just transformed as we talked</p> <p>8 about earlier?</p> <p>9 A Yes.</p> <p>10 Q And it looks like there are three different tables on this</p> <p>11 demonstrative?</p> <p>12 A Correct.</p> <p>13 Q Why are there three separate tables there?</p> <p>14 A Those are the three tables that data is commonly loaded</p> <p>15 into. Depending on what else they are adding, it may go into</p> <p>16 some additional tables.</p> <p>17 Q So is it fair to say that even after the information is</p> <p>18 transformed, that it is then divided up and sent to different</p> <p>19 tables within the Lawson database?</p> <p>20 A Correct.</p> <p>21 Q After this information is extracted, transformed, and</p> <p>22 loaded, is it different than the information that was received</p> <p>23 from the vendor?</p> <p>24 MR. ROBERTSON: Objection, Your Honor, relevancy.</p> <p>25 MS. STOLL-DeBELL: Your Honor, it goes to whether</p>	<p style="text-align: right;">1545</p> <p>1 and get it in that way.</p> <p>2 Otherwise, if he's testifying on the same subjects as</p> <p>3 Dr. Weaver was testifying about, then he'd be giving expert</p> <p>4 testimony, and he does not qualify. He hasn't qualified as an</p> <p>5 expert or given a report. Why isn't it improper lay testimony?</p> <p>6 MS. STOLL-DeBELL: Because I'm simply going to ask</p> <p>7 him questions about what the software does. I am not going to</p> <p>8 ask him to apply the function of the software to the claims in</p> <p>9 this case. I am merely going to go in and ask questions about</p> <p>10 the demonstrations that Dr. Weaver did and how Lawson software</p> <p>11 works.</p> <p>12 THE COURT: Using that exhibit.</p> <p>13 MS. STOLL-DeBELL: Yes.</p> <p>14 THE COURT: All right.</p> <p>15 MR. ROBERTSON: I still press the objection, Your</p> <p>16 Honor, because I think it's improper for this witness to be</p> <p>17 testifying as to what Dr. Weaver presented as an expert witness</p> <p>18 in his demonstrative.</p> <p>19 THE COURT: Why don't we take it question by question</p> <p>20 and see. Now, before we get too far removed on the previous</p> <p>21 question, your question -- from the previous question. Your</p> <p>22 question was, what was his opinion as to whether or not the</p> <p>23 information, when it got finished with ETL, was different from</p> <p>24 when it started ETL; is that right?</p> <p>25 MS. STOLL-DeBELL: Yes.</p>

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<p>1786</p> <p>1 instructions that we think will be appropriate.</p> <p>2 THE COURT: Several? How about one good one?</p> <p>3 MS. STOLL-DeBELL: One with many facets, Your</p> <p>4 Honor.</p> <p>5 THE COURT: Listen, I'm going to make you sit</p> <p>6 on the jury. I think every lawyer ought to have to</p> <p>7 sit on a jury and ought to have to listen to these</p> <p>8 instructions and try to figure out what do they mean.</p> <p>9 Because if you read them from the jury's standpoint,</p> <p>10 particularly these model instructions in the patent</p> <p>11 area, what they're doing is -- nobody has really made</p> <p>12 a real good effort to simplify them yet.</p> <p>13 Judge Spencer did better in SAP in</p> <p>14 simplifying the instructions than almost anybody I've</p> <p>15 ever seen, but there have with some legal changes</p> <p>16 since that time that prohibit me from adopting them</p> <p>17 full scale.</p> <p>18 All right. That takes care of them. I'm not</p> <p>19 real hopeful that you're going to get your evidence or</p> <p>20 I don't think you ought to be hopeful that you're</p> <p>21 going to get that evidence in, Mr. Robertson, because</p> <p>22 it seems to me it invites the jury to speculate and</p> <p>23 it's a problem, I think.</p> <p>24 MR. ROBERTSON: I understand, Your Honor.</p> <p>25 We're also concerned about prejudice given the fact we</p>	<p>1788</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1787</p> <p>1 proffered that in good faith when it came up with the</p> <p>2 witness that he had a lay opinion as to his intent. I</p> <p>3 thought it was relevant then because his lay opinion</p> <p>4 as to the intent I didn't think was very persuasive,</p> <p>5 but if you go get a legal opinion on these issues that</p> <p>6 obviously involve the patents, and then you make the</p> <p>7 conscious decision not to disclose it, I think that's</p> <p>8 part of the circumstantial evidence they can consider.</p> <p>9 I understand Your Honor's ruling.</p> <p>10 THE COURT: I haven't rules.</p> <p>11 MR. ROBERTSON: I understand Your Honor's</p> <p>12 suggestion which way you might rule, but you're going</p> <p>13 to be fair and read the papers.</p> <p>14 THE COURT: I thought maybe if I gave you all</p> <p>15 some insight into where I was right now since we're on</p> <p>16 the fly that your arguments might be better informed</p> <p>17 in the morning, just as my thinking will be better</p> <p>18 informed if I read what you-all tendered for me to</p> <p>19 read.</p> <p>20 Thank you so much for the overnight present.</p> <p>21 I appreciate it.</p> <p>22</p> <p>23 (The proceedings were adjourned at 5:26 p.m.)</p> <p>24</p> <p>25</p>	

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<p>1789</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 14, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 26 909 East Main Street 27 Suite 1200 28 Richmond, Virginia 23219-3095 29 Counsel for the plaintiff 30 31 Peppy Peterson, RPR 32 Official Court Reporter 33 United States District Court</p>	<p>1791</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, we are. 12 THE COURT: All right. Ladies and gentlemen, I'm 13 pleased to report to you my unofficial survey that the economy 14 is recovered. For the first time in 40 years of trading at the 15 Westhampton Bakery, I had to wait 20 to 30 minutes even to get 16 served, and this the lowest period of the year for that bakery, 17 they tell me. So I just wanted you to know, but I told them I 18 was waiting because I had promised you would get your donuts 19 and I don't want to be guilty. 20 Dr. Shamos, I saw him earlier. Dr. Shamos, I remind 21 you -- everybody is renaming you, aren't they? 22 THE WITNESS: We'll see. 23 THE COURT: I remind you you are under the same oath 24 you took yesterday, sir. 25 THE WITNESS: Yes, sir.</p>
<p>1790</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1792</p> <p>1 THE COURT: Thank you. 2 3 MICHAEL I. SHAMOS, 4 a witness, called by the defendant, having been previously 5 duly sworn, testified as follows: 6 DIRECT EXAMINATION 7 BY MR. McDONALD: (resuming) 8 Q Good morning, Dr. Shamos. How are you? 9 A Good morning. I'm good. 10 Q I would like to pick up where we left off, if I got it 11 right anyway here this morning, with this slide showing some of 12 the elements of claim one of the '516 patent on this slide that 13 you put together. Can you walk us through -- 14 THE COURT: Mr. McDonald, excuse me. Just for 15 orientation purposes, when we left off, you had said that you 16 were going through each claim one by one to show, and that's 17 what you are doing. 18 MR. McDONALD: Thank you, yes. 19 THE COURT: I said it's a good time to take a break, 20 so that's what we'll be doing now, is hearing Dr. Shamos's 21 opinion on each claim that's at issue. 22 Q We have the 12 claims. We're going to take them one at a 23 time; right, Dr. Shamos? 24 A Yes. 25 Q Okay. So let's start here with what you have on your</p>

<p style="text-align: right;">1793</p> <p>1 slide, claim one of the '516 patent. Can you walk us through</p> <p>2 your thought process as you put this slide together to explain</p> <p>3 your opinion about that claim?</p> <p>4 A Yes. What I did here was I took each one of the asserted</p> <p>5 claims. I think the text of each claim is present in its</p> <p>6 entirety, and I splint them out element by element, and where I</p> <p>7 had a comment relating to that element, I put it in blue.</p> <p>8 So the first element of the '516, claim one, is a</p> <p>9 collection of catalogs of items stored in an electronic format,</p> <p>10 and as I explained yesterday, there certainly is no collection</p> <p>11 of catalogs. So that element isn't present.</p> <p>12 Q Why don't we stop there for a moment, because I passed</p> <p>13 over a slide yesterday, but I think we can come back to that</p> <p>14 now today. If we can go to slide ten that talks about the</p> <p>15 catalog issue. This is another slide you created; right, Dr.</p> <p>16 Shamos?</p> <p>17 A Yes.</p> <p>18 Q So this relates to claim one of the '516 patent that we</p> <p>19 started talking about today.</p> <p>20 MR. ROBERTSON: Your Honor, I am going to object to</p> <p>21 this slide. I apologize.</p> <p>22 THE COURT: Wait a minute. Take the slide off,</p> <p>23 please.</p> <p>24 MR. ROBERTSON: The last bullet point, Your Honor, as</p> <p>25 addressed before, it says item master not published by a</p>	<p style="text-align: right;">1795</p> <p>1 A That's right. It's any time the word catalog is used.</p> <p>2 Q Okay. So why don't you take us a bullet point at a time</p> <p>3 and a take a pause here, and maybe I can ask you a question</p> <p>4 between each bullet point to tell us about your analysis here</p> <p>5 of the catalogs issue in this case.</p> <p>6 A Okay. Well, we have to look at where the data in item</p> <p>7 master comes from, because item master starts out empty when</p> <p>8 the system is installed. The purpose for the system is to</p> <p>9 allow a user at a particular company, particular licensee of</p> <p>10 this software, to be able to select items that he wants to have</p> <p>11 supplied to him, wants to order.</p> <p>12 Q Let me stop you there. Do you look at that as the same</p> <p>13 purpose or a different purpose from a catalog as the Court has</p> <p>14 defined it?</p> <p>15 A The purpose for a catalog is to allow somebody to know</p> <p>16 what a vendor is offering, what their menu of selection is that</p> <p>17 they can buy. That's the purpose of the catalog.</p> <p>18 Q Is that the purpose of the Lawson item master?</p> <p>19 A Yes.</p> <p>20 Q Is the purpose of the item master of the Lawson system to</p> <p>21 show the products that a vendor is offering to sell?</p> <p>22 A No. It's to show the set of products that this company is</p> <p>23 possibly interested in buying.</p> <p>24 Q So I'll let you continue then through the bullet points.</p> <p>25 A Yes. So, there are many different ways in which data can</p>
<p style="text-align: right;">1794</p> <p>1 vendor. This was something that Your Honor addressed with Mr.</p> <p>2 Christopherson. That's not consistent with the Court's claim</p> <p>3 construction. The item master doesn't have to be published by</p> <p>4 a vendor. I think you took that up before.</p> <p>5 THE COURT: This is his reason for doing it. We'll</p> <p>6 deal with all of that later, I think.</p> <p>7 MR. McDONALD: Your Honor, just to be clear --</p> <p>8 THE COURT: Excuse me. I'm sorry. This is his</p> <p>9 reason for his opinion, and I think he's entitled to give that.</p> <p>10 Whether he's right or not, it's what you and Mr. McDonald will</p> <p>11 have to argue to the jury.</p> <p>12 MR. McDONALD: So you know, we tried to go through</p> <p>13 all these slides last night, and I thought actually this one</p> <p>14 had been approved by ePlus's attorneys, and I'm trying to only</p> <p>15 go through the slides today we've already cleared up. So I</p> <p>16 apologize for any glitches we have.</p> <p>17 THE COURT: I don't know that there was a glitch.</p> <p>18 Anyway, the objection is overruled, and you may proceed. Put</p> <p>19 it back up, please, sir.</p> <p>20 Q So, Dr. Shamos, this was the slide you put together that</p> <p>21 relates to the word catalog as defined by the Court in all the</p> <p>22 various claims that use the word catalog; is that right?</p> <p>23 A Yes.</p> <p>24 Q So it's not just claim one of the '516 patent, right, that</p> <p>25 we're talking about when we talk about catalogs?</p>	<p style="text-align: right;">1796</p> <p>1 get into item master. One way is that vendors make available,</p> <p>2 in an electronic form, the list of products that they offer.</p> <p>3 The customer can then choose from among those products the ones</p> <p>4 that it would like to load into item master. That's one way.</p> <p>5 Another is it doesn't even have to start from a vendor.</p> <p>6 It can be from databases that already exist at the customer.</p> <p>7 The customer can decide to load those into item master.</p> <p>8 Now, it's conceivable that somebody could take a vendor's</p> <p>9 catalog and load absolutely everything that was in that catalog</p> <p>10 that would fit into item master, into item master. In that</p> <p>11 case, I wouldn't see any particular difference between the</p> <p>12 vendor's catalog and item master. I don't have any evidence</p> <p>13 that that ever occurred or ever does occur.</p> <p>14 Q In your report, I think when you were addressing this</p> <p>15 issue, you talked in terms of a phonebook and an address book;</p> <p>16 do you recall that?</p> <p>17 A Yes.</p> <p>18 Q Can you explain how that would relate here to your</p> <p>19 analysis of the issue you were just talking about?</p> <p>20 A Yes. Well, I have an address book, as many people do. It</p> <p>21 contains a list of people that I have a feeling that sometime</p> <p>22 in the future I may want to contact or may want to call or may</p> <p>23 want to write to, and one way to construct an address book is</p> <p>24 to go through the phonebook, look up the phone numbers of the</p> <p>25 people that you are familiar with, and you write those into</p>

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<p>1797</p> <p>1 your address book.</p> <p>2 You can think of the phonebook as the phone company's</p> <p>3 catalog. It's the list of people that are available to be</p> <p>4 called by that phone company. But an address book is not the</p> <p>5 same thing as that. The address book is uniquely crafted by</p> <p>6 me. It's my selection of those people that are callable that</p> <p>7 I'm interested in calling.</p> <p>8 Q Is it your understanding that under Dr. Weaver's analysis,</p> <p>9 would he consider that address book in your example there a</p> <p>10 catalog as the Court has defined it or not?</p> <p>11 A That's my understanding.</p> <p>12 Q What is your understanding?</p> <p>13 A Of his opinion.</p> <p>14 Q What is your understanding?</p> <p>15 A My recollection from --</p> <p>16 THE COURT: Just a minute. He doesn't have any way</p> <p>17 of answering what Dr. Weaver testified to in court, because he</p> <p>18 doesn't know, he was excluded, and what he remembers of Dr.</p> <p>19 Weaver's report isn't appropriate for examination because the</p> <p>20 reports don't come into evidence.</p> <p>21 It's only the testimony that comes into evidence, and</p> <p>22 so I don't think either one of you need to be questioning what</p> <p>23 the other expert did in his report. Those reports are done for</p> <p>24 purposes of giving opinions and having preliminary matters.</p> <p>25 The only purpose of it here in court, of the report here in</p>	<p>1799</p> <p>1 A No.</p> <p>2 Q Why don't you go ahead and continue with this slide.</p> <p>3 A Yes. So the third bullet point, even if a customer loads</p> <p>4 all item data from a published vendor catalog, that is if it</p> <p>5 only comes from one place, that still doesn't mean it's a</p> <p>6 catalog within the Court's construction.</p> <p>7 Q Why is that?</p> <p>8 A It was not emitted by a vendor.</p> <p>9 Q It was not? I'm sorry?</p> <p>10 A It was not emitted, it was not distributed by a vendor.</p> <p>11 THE COURT: Just a minute. The Court's construction</p> <p>12 doesn't have anything to do with distributed by a vendor. It</p> <p>13 has published by a vendor. That testimony -- what he just did</p> <p>14 is give claim construction.</p> <p>15 Let's keep it to the claim construction, please, the</p> <p>16 questions, because it's hard enough for the jury to follow</p> <p>17 technical issues in any patent case without having to undo what</p> <p>18 has been done here. So just, please, straighten it out.</p> <p>19 Q Maybe it would be useful, Dr. Shamos, if we just go to</p> <p>20 slide ten, please. This is some analysis that you did as to</p> <p>21 why an item master in the Lawson system is different from the</p> <p>22 catalog as defined by the Court; is that right?</p> <p>23 A Yes.</p> <p>24 Q Can you walk us through one bullet point at a time,</p> <p>25 please, what you put together in this slide.</p>
<p>1798</p> <p>1 court is if an expert testifies beyond the scope of the report,</p> <p>2 you need -- either one of you objects to it, to tell me what</p> <p>3 the problem is, and I rule that he can't or can testify</p> <p>4 depending upon whether the report covered that topic.</p> <p>5 Otherwise, we're get -- what we're doing is actually</p> <p>6 letting in the back door hearsay testimony about the other</p> <p>7 person's report, and if the Doctor didn't testify to that in</p> <p>8 court, and he doesn't have any way of knowing what Dr. Weaver</p> <p>9 testified to, he can't be examined about that. So let's don't</p> <p>10 be asking him, anybody about the other expert's report or their</p> <p>11 testimony because they don't know.</p> <p>12 Q In your --</p> <p>13 THE COURT: There's a way to frame questions that</p> <p>14 deal with whatever was said, but that's up to you. You know</p> <p>15 how to do that.</p> <p>16 Q In your example, Dr. Shamos, regarding your personal</p> <p>17 address book, if I understood right you are saying your address</p> <p>18 book is not like a published phonebook?</p> <p>19 A That's right.</p> <p>20 Q Even though -- now, in your example, did some of the data</p> <p>21 in your address book originate from the phone company's</p> <p>22 published phonebook?</p> <p>23 A Yes. That's where phone numbers come from.</p> <p>24 Q Does that change your answer as to whether your personal</p> <p>25 address book is a published phonebook or not?</p>	<p>1800</p> <p>1 MR. ROBERTSON: Your Honor, can I just have a running</p> <p>2 objection to that? First, it calls for a narrative, but</p> <p>3 secondly, this has to do with our earlier issue with respect --</p> <p>4 THE COURT: He's now explaining the basis for his</p> <p>5 opinion.</p> <p>6 MR. ROBERTSON: I understand, Your Honor.</p> <p>7 THE COURT: Within certain parameters, he can do</p> <p>8 that, but if he starts -- you understand the reason why I'm</p> <p>9 concerned in this particular case, do you not?</p> <p>10 MR. McDONALD: I understand you want us --</p> <p>11 THE COURT: Let me see counsel up here for just a</p> <p>12 minute.</p> <p>13</p> <p>14 (Discussion at sidebar as follows:)</p> <p>15</p> <p>16 THE COURT: My concern is I have excluded a great</p> <p>17 number of his opinions, and I don't -- unless the questions are</p> <p>18 framed in a way that Mr. Robertson knows what is coming, then I</p> <p>19 get confronted with the situation that I have to go back and</p> <p>20 undo, and that creates confusion in the minds of the jury. And</p> <p>21 I believe the expert, just like Dr. Weaver did, has the</p> <p>22 opportunity to explain his opinions, but I think other than</p> <p>23 just turning him on and turning him loose, if you could keep a</p> <p>24 handle on it, that will solve that problem. Then if there is</p> <p>25 an objection -- I mean, you've seen this big thing they've</p>

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<p>1801</p> <p>1 filed about what opinions are in and what aren't, and in this</p> <p>2 particular case, I think we'll be better able to handle it</p> <p>3 without having to undo anything, if, in fact, it needs undoing.</p> <p>4 Do you see what my problem is here?</p> <p>5 MR. McDONALD: I do exactly, Your Honor. I'm going</p> <p>6 to give you a little context here. That's one of the reasons</p> <p>7 why we meticulously went through every slide that I'm going to</p> <p>8 go through with ePlus's counsel before we got in here. So</p> <p>9 there's no surprises, at least on the slides, so it's really</p> <p>10 going to guide things. This slide, they've approved this</p> <p>11 slide, and I'm not touching any slides today they haven't</p> <p>12 already seen.</p> <p>13 MR. ROBERTSON: I understand --</p> <p>14 THE COURT: But you going to have to -- if, in fact,</p> <p>15 there's an excursion in an answer you're going to have to stand</p> <p>16 up and do something about it immediately. It's impossible for</p> <p>17 me to undo something once it's been said. That said, I think</p> <p>18 it's only fair that an expert have a chance reasonably to</p> <p>19 explain his opinion. That's just the way it's been done.</p> <p>20 MR. ROBERTSON: I appreciate that, Your Honor, but I</p> <p>21 think his opinions still need to stay within the boundaries of</p> <p>22 the Court's claim construction. They have to be relevant to</p> <p>23 the Court's claim construction, and they can't deviate from the</p> <p>24 Court's claim construction. So as long as -- I will be</p> <p>25 objecting if he starts to suggest that your claim construction</p>	<p>1803</p> <p>1 that these points here satisfy or don't satisfy the Court's</p> <p>2 claims construction of catalog.</p> <p>3 THE COURT: I think he can do that point by point.</p> <p>4 MR. McDONALD: At least we have an agreement that as</p> <p>5 to the slides themselves, we've already agreed.</p> <p>6 THE COURT: Have you?</p> <p>7 MR. ROBERTSON: Yes.</p> <p>8 MR. McDONALD: I'll just try to keep it real tied to</p> <p>9 these slides, and that should keep us out of trouble.</p> <p>10 THE COURT: Thank you.</p> <p>11</p> <p>12 (End of sidebar discussion.)</p> <p>13</p> <p>14 THE COURT: I thought this would make things go a</p> <p>15 little better, I think.</p> <p>16 Q Dr. Shamos, I think we were on the first bullet point</p> <p>17 here. Had you finished talking specific about what the point</p> <p>18 was you were making on that first bullet point on slide number</p> <p>19 ten that's up on the screen right now?</p> <p>20 A I actually thought we were about to do bullet point number</p> <p>21 four.</p> <p>22 Q That shows you how good my memory is. Why don't we zero</p> <p>23 in now on bullet point number four, item master is created by</p> <p>24 the customer and includes this data. Can you tell how that</p> <p>25 specific point, sticking with that point, relates to your</p>
<p>1802</p> <p>1 can be satisfied by his, as he just did, essentially rewriting</p> <p>2 it to suit his opinions.</p> <p>3 THE COURT: You see, he got into distributed in his</p> <p>4 answer. You didn't ask him --</p> <p>5 MR. McDONALD: You said something about emitted or</p> <p>6 something.</p> <p>7 THE COURT: That isn't distributed.</p> <p>8 MR. McDONALD: With the slides, I'm really trying to</p> <p>9 get him to stick to his bullet points here --</p> <p>10 THE COURT: I know. That's one of the reasons I'm</p> <p>11 saying all this, is if you have control of it, it's easier.</p> <p>12 MR. McDONALD: I'll try to focus my questions a</p> <p>13 little more, but I do have a concern if Mr. Robertson is going</p> <p>14 to say, well, I know the slides, I'm going to keep objecting to</p> <p>15 what's on the slides, because we had a lot of give-and-take</p> <p>16 over what's in these slides. I don't want him to come in after</p> <p>17 we've already given up some things and say, okay, now that</p> <p>18 you've given up your stuff, I'm going to take more away. I</p> <p>19 think if it's on the slides, we've already agreed to that.</p> <p>20 THE COURT: Mr. Robertson, he says basically you have</p> <p>21 agreed that as to the things on the slides, the area of</p> <p>22 testimony can be covered; is that true?</p> <p>23 MR. ROBERTSON: I've agreed that this slide can be</p> <p>24 covered. What I didn't like about the question, Your Honor, is</p> <p>25 it was give us all the reasons why you are now going to say</p>	<p>1804</p> <p>1 opinion in this case?</p> <p>2 A Yes. Certainly there's information about an item that</p> <p>3 comes from a vendor. For example, typically the part number of</p> <p>4 the vendor, the number you would use to specify what product it</p> <p>5 is you'd like to order, that's created by the vendor. That's</p> <p>6 part of the vendor's data.</p> <p>7 So some of the data that goes into item master does come</p> <p>8 directly from a vendor. There's other information that doesn't</p> <p>9 come directly from a vendor. For example, the way the customer</p> <p>10 chooses to describe the product, the name of it, relates to the</p> <p>11 terminology that happens to be used in that company. It may</p> <p>12 not be the same as the name of the product in the vendor's</p> <p>13 catalog, but, undoubtedly, some of the data that's going to end</p> <p>14 up in item master has come from the vendor originally.</p> <p>15 However, it's the vender -- it's the customer that's doing the</p> <p>16 selection of which pieces of data it chooses to include in item</p> <p>17 master.</p> <p>18 Q You have another slide that goes into that issue in a</p> <p>19 little more detail; right?</p> <p>20 A Yes.</p> <p>21 Q So for those reasons, your bottom line here is this is why</p> <p>22 the Lawson item master is not a catalog as the Court has</p> <p>23 defined that term?</p> <p>24 A That's right.</p> <p>25 Q Let's go to slide number ten now. I'm sorry. Can you</p>

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<p>1805</p> <p>1 give me a few other examples of the sort of information that a</p> <p>2 customer adds to the item master that would not come from a</p> <p>3 vendor?</p> <p>4 A Yes. The customer can add special pricing information, if</p> <p>5 it gets a discount, it adds information about quantity on hand</p> <p>6 that it may have in its own inventory.</p> <p>7 Q How about approval process, are you aware of whether</p> <p>8 customers sometimes have information in there about approval</p> <p>9 process?</p> <p>10 MR. ROBERTSON: Objection, relevancy.</p> <p>11 MR. McDONALD: It's just another example of the</p> <p>12 things we've already been talking about.</p> <p>13 THE COURT: As I recall it, the software, from the</p> <p>14 testimony that your witness has put on, there's a special way</p> <p>15 to get the customer approval, and that's not being accused in</p> <p>16 the case.</p> <p>17 MR. McDONALD: I'm talking actually about the</p> <p>18 information in the item master that relates to the approval</p> <p>19 process.</p> <p>20 THE COURT: I see. All right. Overruled.</p> <p>21 A I don't have a specific recollection of that.</p> <p>22 Q I think you already talked about the issue of special</p> <p>23 pricing. I think we covered that one, didn't we?</p> <p>24 A Yes.</p> <p>25 Q Let's move on then. Do you have an understanding as to</p>	<p>1807</p> <p>1 catalogs?</p> <p>2 THE WITNESS: No.</p> <p>3 THE COURT: Or is it not possible for some reason</p> <p>4 independent of your view that there's no catalog?</p> <p>5 THE WITNESS: Let's assume hypothetically that item</p> <p>6 master were a catalog, or even --</p> <p>7 THE COURT: Assume that it has catalogs in it.</p> <p>8 THE WITNESS: Let's assume that it has catalogs in it</p> <p>9 hypothetically.</p> <p>10 THE COURT: Your first element is, it doesn't include</p> <p>11 a collection of catalogs. What I'm asking you is very simple.</p> <p>12 Is your opinion on the second point based on the fact that</p> <p>13 there's no collection of catalogs, or is it based on some</p> <p>14 independent reason?</p> <p>15 THE WITNESS: It's independent, Your Honor.</p> <p>16 THE COURT: Good. Go ahead and explain that then.</p> <p>17 Thank you. I just needed to understand that. So it's the</p> <p>18 second reason, all right.</p> <p>19 Q What is the additional reason you are talking about</p> <p>20 specific to element B of claim one?</p> <p>21 A Because even if item master were considered to be a</p> <p>22 collection of catalogs, there's no way of selecting less than</p> <p>23 all of them. There's no mechanism within S3 to do that.</p> <p>24 Q Why don't we go to the next slide, please. Here you've</p> <p>25 got the element that you have labeled C of claim one of the</p>
<p>1806</p> <p>1 what ePlus contends is the number of catalogs that would be in</p> <p>2 a typical Lawson item master or not?</p> <p>3 MR. ROBERTSON: Objection. There's no contention by</p> <p>4 ePlus as to a typical number of catalogs that can be in item</p> <p>5 master. There's no foundation for that.</p> <p>6 MR. McDONALD: If he doesn't, he doesn't. I guess if</p> <p>7 they're agreeing to that, I guess fine.</p> <p>8 THE COURT: It's not a contention, it's not relevant,</p> <p>9 so I agree with that. It's not been raised in anything that's</p> <p>10 come up in the case yet, so I sustain the objection to that.</p> <p>11 Q So in your opinion, Dr. Shamos, is the item master in the</p> <p>12 Lawson system published by anyone?</p> <p>13 A No.</p> <p>14 Q Let's pick up again and go back to slide 21, please. So</p> <p>15 we've talked about '516, claim one, element A so far. Can we</p> <p>16 now go to element B, please, and tell us your analysis specific</p> <p>17 to element B of claim one of the '516 patent?</p> <p>18 A Yes. Well, element B is a first set of predetermined</p> <p>19 criteria associated with said collection of catalogs. While in</p> <p>20 the patent, the first set of predetermined criteria are used</p> <p>21 for selecting less than the entire collection of catalogs, and</p> <p>22 it's not possible to do that in the S3 system, so there aren't</p> <p>23 such a set of criteria.</p> <p>24 THE COURT: Excuse me just a minute. Is it not</p> <p>25 possible because there's no -- in your view, because there's no</p>	<p>1808</p> <p>1 '516 patent; right, Dr. Shamos?</p> <p>2 A Yes.</p> <p>3 Q Can you explain to us the reason why you say that element</p> <p>4 is not satisfied in the Lawson item master -- or the Lawson</p> <p>5 system?</p> <p>6 A Yes. The second set of predetermined criteria that really</p> <p>7 are the searching criteria, what items would I like to find for</p> <p>8 possible ordering, and there, the reason that element C is not</p> <p>9 present, that ties in to element A which is if there's no</p> <p>10 catalog, you can't have predetermined criteria for associated</p> <p>11 with items from the catalog.</p> <p>12 Q So for this one, you say it's not satisfied because</p> <p>13 there's no catalogs again?</p> <p>14 A That's right.</p> <p>15 Q Let's move to the next slide. This goes to the fourth</p> <p>16 element that you've labeled as D of claim one of the '516</p> <p>17 patent; correct?</p> <p>18 A Yes.</p> <p>19 Q Now, this is kind of a longer element that you've got on</p> <p>20 the slide that fits the black type on your slide; correct?</p> <p>21 A The black type is the remainder of the claim language for</p> <p>22 element D.</p> <p>23 Q So can you summarize for us what your reasoning was</p> <p>24 specific to this element? I'm not asking you to read the whole</p> <p>25 element unless it's absolutely necessary, but can you summarize</p>

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<p style="text-align: right;">1817</p> <p>1 whether or not the Lawson accused system satisfies that element 2 of claim nine? 3 A Yes. In order for there to be a second identification 4 code, there has to be a second catalog, and even if there's one 5 catalog, there weren't two catalogs in S3. So that element 6 can't be present. 7 Q Is there some language in this element about the second 8 item being, quote, generally equivalent? 9 A Yes. 10 Q Do you have an opinion as to whether in the Lawson system, 11 the Lawson systems accused here, satisfy that part of that 12 element? 13 A There's no notion in the Lawson systems of general 14 equivalents. There's no way to ask the system for a generally 15 equivalent item. 16 Q Do you have an understanding as to what aspect of the 17 Lawson system is dependent in this case to satisfy that part of 18 that element? 19 A Only from expert reports. 20 Q Let's go to slide 30 then, if we can turn to that, Bill. 21 Dr. Weaver, did you look at -- 22 MR. ROBERTSON: Dr. Weaver? 23 A I am Shamos. 24 MR. McDONALD: I made it this far today. 25 Q Dr. Shamos, did you look at all at the issue of whether or</p>	<p style="text-align: right;">1819</p> <p>1 that has the same UNSPSC code. So there's no converting that's 2 going on. There's no matching that goes on with respect to 3 UNSPSC codes even though they may be physically present in the 4 database. 5 Q You have here, and this is another slide we have up on the 6 screen that you prepared; is that right? 7 A Yes. 8 Q On the last point there, what's the last bullet point? 9 Can you explain what you meant by that? 10 A It's only within RSS, not the totality of the systems that 11 are accused. It's only RSS that allows even searching of the 12 UNSPSC code. 13 Q Can we turn to the next slide, please, 31. 14 A Yes. 15 Q Is this another slide you put together, Dr. Shamos? 16 A Well, I put it together, but literally it's copied out of 17 a white paper that was published explaining what UNSPSC codes 18 are. So I didn't write the words that are on the slide except 19 for the title. 20 THE COURT: In other words, you made the slide. 21 THE WITNESS: I made the slide. I had an electronic 22 copy of that white paper. I had it on the screen. I used a 23 photo editor, and I did a screen capture and then cropped it 24 down and stuck it on the slide directly out of that UNSPSC 25 white paper.</p>
<p style="text-align: right;">1818</p> <p>1 not in the Lawson system the use of the UNSPSC codes would 2 satisfy any claim elements of any of the asserted claims in 3 this case relating to generally equivalent items? 4 A Did I look at that? 5 Q What was your conclusion about that? 6 A That it doesn't. 7 Q Why not? 8 A So, the UNSPSC code is a generally accepted international 9 coding to categorize products. There's a big difference 10 between desks and chairs, and so if you gave a code to desks, 11 you could immediately tell that something was a desk and it 12 wasn't a chair. And it happens to be hierarchically organized. 13 That is, it has different levels, so you can get to office 14 furniture, and then within office furniture you could have 15 desks, and then within desks you can desks with drawers or 16 without drawers, et cetera. 17 The Lawson software does provide the ability for a 18 customer to enter UNSPSC codes into the item master database if 19 he wants to do that, and sometimes it's useful for people who 20 are ordering things to know what the UNSPSC code is associated 21 with a particular item, but those UNSPSC codes are not used for 22 the purpose of determining whether things are generally 23 equivalent. 24 There's no automatic conversion. I can't go and say, if 25 you're out of stock of this product, please give me another one</p>	<p style="text-align: right;">1820</p> <p>1 Q Can you tell us in a nutshell, Dr. Shamos, what your main 2 point was for putting together this particular slide as it 3 relates to your testimony here? 4 A Yes. It was to show this eight-digit classification of 5 items and why it's hierarchical. This is the UNSPSC 6 explanation of what these codes look like. The code, as you 7 can see at the bottom where it says pen refills equals UNSPSC 8 classification 44-12-19-03. 9 The significance of those numbers, 12, 19, and 03, depend 10 on the fact that they are coming from 44. So 44 is office 11 equipment, accessories, and supplies. Within that, 12 is 12 office supplies. Within 12, 19 is ink and led refills, and 13 within 19, 03 is pen refills. And so what 44-12-19-03 tells 14 you is it's a pen refill. 15 It doesn't tell you what kind of pen, and so if I want to 16 buy a refill for my pen, it's going to have to have -- if 17 there's any UNSPSC classification at all, it's going to have to 18 have 44, 12, 19, 03, but I can't just buy any pen refill. It 19 has to fit in that particular pen. So these UNSPSC codes don't 20 describe substitutable or generally equivalent items. 21 Q Can we turn to the next slide, please, number 32. I think 22 you've essentially already covered the first three bullet 23 points on this slide? 24 A Yes, we can go right to number four. 25 Q What was your point with bullet point number four?</p>

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1 and get these binders that you sent up here at the
2 very beginning, not now, because you-all are both
3 adopting a new mode, and I need the space to put in
4 the exhibits that you are using.
5 I'd like to say that I'd like to commend, and
6 it's obvious to me there's been some hard work put in
7 by the legal assistants in this case. There have been
8 very few problems, and when there have been problems,
9 they have been solved immediately. And you can't do
10 that unless you know what you're doing.
11 And the IT people, I think you-all have done
12 a fine job, too. Of course, the lawyers. I don't
13 mean to take anything away from you, but I remember
14 well who does most of the work.
15 MR. McDONALD: Your Honor, just one more
16 thing with respect to that last video that Ms. Huey
17 would like to offer.
18 MS. HUGHEY: I'd like to offer it as
19 Defendant's Exhibit 401.
20 THE COURT: What is it?
21 MS. HUGHEY: This is the transcript of what
22 was read in. My understanding is that
23 Ms. O'Loughlin's deposition transcript was read in, I
24 believe, and it will be marked as an exhibit for the
25 record.

2046

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1 THE COURT: Any objections? It's admitted.
2 THE CLERK: What number is that?
3 THE COURT: 401. Defendant's 401.
4 (Defendant's Exhibit 401 is admitted into
5 evidence.)
6 THE COURT: All right. Anything else anybody
7 has so we can get ready to go on Tuesday morning?
8 MR. McDONALD: Nothing else, Your Honor, for
9 the defense.
10 THE COURT: All right.
11 MR. ROBERTSON: Sorry, Your Honor. I didn't
12 hear you.
13 THE COURT: I just want to know if there's
14 anything else so that we can solve it and get going
15 and actively out of the box at nine o'clock Tuesday
16 morning.
17 MR. ROBERTSON: Nothing by the plaintiff.
18 THE COURT: Okay. That sounds good. All
19 right.
20
21 (The proceedings were adjourned at 5:20 p.m.)
22
23
24
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<p style="text-align: right;">2532</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 ----- 5 ePLUS, INC., : 6 : 7 Plaintiff, : 8 v. : Civil Action 9 : No. 3:09CV620 10 LAWSON SOFTWARE, INC., : 11 : January 20, 2011 12 Defendant. : 13 ----- 14 COMPLETE TRANSCRIPT OF JURY TRIAL 15 BEFORE THE HONORABLE ROBERT E. PAYNE 16 UNITED STATES DISTRICT JUDGE, AND A JURY 17 18 APPEARANCES: 19 Scott L. Robertson, Esq. 20 Jennifer A. Albert, Esq. 21 Michael T. Strapp, Esq. 22 GOODWIN PROCTOR 23 901 New York Avenue, NW 24 Washington, D.C. 20001 25 26 Craig T. Merritt, Esq. 27 CHRISTIAN & BARTON 28 909 E. Main Street, Suite 1200 29 Richmond, VA 23219-3095 30 31 Counsel for the plaintiff ePlus 32 33 DIANE J. DAFFRON, RPR 34 OFFICIAL COURT REPORTER 35 UNITED STATES DISTRICT COURT</p>	<p style="text-align: right;">2534</p> <p>1 (The proceedings in this matter commenced at 2 9:15 a.m.) 3 (The jury is not present.) 4 THE CLERK: Civil Action No. 3:09CV00620, 5 ePlus, Incorporated v. Lawson Software, Incorporated. 6 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 7 Ms. Jennifer A. Albert, and Mr. Michael G. Strapp 8 represent the plaintiff. Mr. Daniel W. McDaniel, 9 Mr. Dabney J. Carr, IV, Ms. Kirstin L. Stoll-DeBell, 10 Mr. William D. Schultz, and Ms. Rachel C. Hughey 11 represent the defendant. 12 Are counsel ready to proceed? 13 MR. ROBERTSON: Yes, Your Honor. 14 MR. McDONALD: Yes, Your Honor. 15 THE COURT: What do you need to see me about? 16 MR. McDONALD: I think we worked out all the 17 issues on the Hilliard slides. I think the only thing 18 that was outstanding was these jury questions. 19 MR. ROBERTSON: There is also -- 20 THE COURT: I don't need the jury questions, 21 to deal with them now. 22 MR. ROBERTSON: All right. 23 THE COURT: Oh, the questions raised by the 24 jury. Oh, yes. What do you want to do about the 25 questions? Where is that thing that was submitted</p>
<p style="text-align: right;">2533</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 Rachel C. Hughey, Esq. 6 MERCHANT & GOULD 7 3200 IDS Center 8 80 South Eighth Street 9 Minneapolis, MN 55402-2215 10 11 Dabney J. Carr, IV, Esq. 12 TROUTMAN SANDERS 13 Troutman Sanders Building 14 1001 Haxall Point 15 P.O. Box 1122 16 Richmond, VA 23218-1122 17 18 Counsel for the defendant Lawson Software. 19 20 21 22 23 24 25</p>	<p style="text-align: right;">2535</p> <p>1 yesterday? Court Exhibit 4. 2 Are P.O. Writer and J-CON patented, if so, 3 when? Didn't Dr. Staats say that it was within a 4 year? 5 Basically, what he said is for them to 6 remember. So was the J-CON system only used for 7 automotive purposes and couldn't be used, all that big 8 long text is something he testified to or didn't, and 9 they'll have to remember that testimony. And you-all 10 will address it in argument; is that right? 11 MR. McDONALD: I think that's fair, Your 12 Honor. 13 MR. ROBERTSON: Your Honor, I think the real 14 response, what I would suggest, Your Honor, is that 15 just you need not concern yourself with it. Whether 16 the J-CON system addressed auto parts or medical 17 systems, the J-CON system is not prior art in this 18 case, and that's why they don't need to consider it. 19 Dr. Shamos didn't over any opinions with respect to it 20 and I think this is just ripe for confusion if we say 21 it had some significance. 22 The same thing with were P.O. Writer and 23 J-CON patented. That's evidence of some confusion on 24 the part of the jury. First of all, they need not 25 concern themselves with whether J-CON or P.O. Writer</p>

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<p style="text-align: right;">2664</p> <p>Hilliard - Direct 2664</p> <p>1 the ePlus patents?</p> <p>2 A Yes.</p> <p>3 Q In the course of your engagement, have you reviewed and</p> <p>4 responded to opinions that were rendered by Lawson's expert,</p> <p>5 Dr. Shamos?</p> <p>6 A Yes.</p> <p>7 Q In general, what did you do to prepare your response to</p> <p>8 Dr. Shamos's opinions?</p> <p>9 A Well, of course I read his opinions, and I reviewed all</p> <p>10 the documents that he had referenced in his opinions. I</p> <p>11 also -- there are a large volume of documents that have been</p> <p>12 produced in this case, and I've read through, I think, all of</p> <p>13 those that relate to the validity of the patents.</p> <p>14 I've also reviewed the testimony, the deposition testimony</p> <p>15 of the inventors and those with knowledge of some of the</p> <p>16 alleged prior art systems. I've also reviewed testimony from</p> <p>17 the SAP trial of those same individuals.</p> <p>18 Q Did you review the patents that are at issue here in the</p> <p>19 file histories relating to their prosecution before the Patent</p> <p>20 Office?</p> <p>21 A I did. Both the patents at issue, and there are some</p> <p>22 patents referenced that I reviewed in some detail.</p> <p>23 Q Did you review Dr. Shamos's expert report?</p> <p>24 A Yes, I did.</p> <p>25 Q Were you provided with an understanding of the applicable</p>	<p style="text-align: right;">2666</p> <p>Hilliard - Direct 2666</p> <p>1 Q Did you also have an opportunity to review the Court's</p> <p>2 order concerning the construction of the key terms used in the</p> <p>3 patent claims?</p> <p>4 A Yes.</p> <p>5 Q Did you take the Court's claim constructions into account</p> <p>6 in rendering your opinions?</p> <p>7 A Yes. They were a foundation.</p> <p>8 Q Now, turning to some of Lawson's contentions that are at</p> <p>9 issue here, are you aware that Lawson has alleged that several</p> <p>10 systems were in public use prior to the relevant August 1994</p> <p>11 filing date of the ePlus patents?</p> <p>12 A I'm aware of that, yes.</p> <p>13 Q And what types of evidence do you consider to be relevant</p> <p>14 to your analysis of this issue of public use?</p> <p>15 A My -- when I look at this, I have to look at what evidence</p> <p>16 is there in documentary form primarily to determine whether the</p> <p>17 dates of the document can corroborate that the allegedly in-use</p> <p>18 system was in use and performing the functions that it's</p> <p>19 claimed to perform, i.e., the functions in the claims before</p> <p>20 August of 1994.</p> <p>21 So I look for hard written documentation that has a dating</p> <p>22 on it that shows that it existed prior to 1994. I also</p> <p>23 consider other evidence, but other evidence needs to be</p> <p>24 corroborated, in my view, with documentary evidence.</p> <p>25 MR. McDONALD: Object, Your Honor, to the witness's</p>
<p style="text-align: right;">2665</p> <p>Hilliard - Direct 2665</p> <p>1 legal principles that govern your analyses?</p> <p>2 A Yes, I was.</p> <p>3 Q Did you have an opportunity to personally review and use</p> <p>4 any of the alleged prior art systems?</p> <p>5 A Well, I have had that experience with the PO Writer system</p> <p>6 during the SAP trial. SAP was able to produce a copy of that</p> <p>7 software, and I was able to experiment with it, exercise it,</p> <p>8 and determine how it functioned. I did so prior to that trial,</p> <p>9 and I also did so in court during that trial.</p> <p>10 Q Did you review file listings relating to the computer code</p> <p>11 for that system?</p> <p>12 A I did.</p> <p>13 Q And do you recall any relevant information about the dates</p> <p>14 that were included in those file listings?</p> <p>15 A Yes. The dates included both dates preceding and dates</p> <p>16 following August of 1994.</p> <p>17 MR. McDONALD: I'll object, Your Honor, as irrelevant</p> <p>18 and confusing. We haven't proffered any, and he's talking</p> <p>19 about dates of things that weren't in evidence in this case.</p> <p>20 MS. ALBERT: I'll move on.</p> <p>21 THE COURT: I think he's just relating what he did</p> <p>22 and his familiarity with the systems at issue.</p> <p>23 Q Did you have the opportunity to review the validity report</p> <p>24 submitted by ePlus's other technical expert, Dr. Alfred Weaver?</p> <p>25 A Yes, I did.</p>	<p style="text-align: right;">2667</p> <p>Hilliard - Direct 2667</p> <p>1 explanation of corroborating. His own personal standard isn't</p> <p>2 appropriate or relevant here.</p> <p>3 THE COURT: What do you say?</p> <p>4 MS. ALBERT: It's relevant to his analysis of what he</p> <p>5 considered for purposes of trying to determine and render</p> <p>6 opinions on whether systems were allegedly in public use.</p> <p>7 THE COURT: I'll tell you about corroboration in</p> <p>8 connection with the public use, and so I'll give you the</p> <p>9 instruction, ladies and gentlemen. He was just explaining why</p> <p>10 it is that he confined his -- that he focused principally on</p> <p>11 documentary evidence.</p> <p>12 Q Now, Mr. Hilliard, are you -- in rendering your opinions</p> <p>13 concerning the validity of ePlus's patents, are you aware that</p> <p>14 Lawson has alleged that each of the asserted claims at issue</p> <p>15 here are invalid as being anticipated by the RIMS system as</p> <p>16 described in the '989 patent?</p> <p>17 A I'm aware that's their contention, yes.</p> <p>18 Q Do you agree with those allegations?</p> <p>19 A No, I don't.</p> <p>20 Q Why do you disagree with that?</p> <p>21 MR. McDONALD: Your Honor, I don't think we went into</p> <p>22 the anticipation of RIMS in terms of Dr. Shamos's opinion. I</p> <p>23 thought we already went into it --</p> <p>24 THE COURT: I lost what you were saying.</p> <p>25 MR. McDONALD: Dr. Shamos's testimony was focused on</p>

1 your closing arguments.

2 MR. McDONALD: I would expect that.

3 THE COURT: I don't want any problems on Monday

4 morning, so I want you all to show those demonstratives to each

5 other. Are they ready now?

6 MR. ROBERTSON: I would suggest we schedule a meeting

7 sometime together Sunday and iron it all out.

8 MR. McDONALD: I think we can try to come up with a

9 time to exchange, maybe Sunday morning, 9:00 a.m.

10 THE COURT: All right. That's fine. Okay. That's

11 it then, is it? All right. We'll be in adjournment.

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13 (Court adjourned.)

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<p>3078</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 24, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 David M. Young, Esquire 19 Goodwin Procter, LLP 20 901 New York Avenue NW 21 Suite 900 22 Washington, D.C. 20001 23 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>3080</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz represent the 9 defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. I was very sorry to hear 13 about Ms. Albert's father passing away. You all both wrote 14 letters about it. I don't see the point in bringing that to 15 the attention the jury. Do either one of you? 16 In the old days, when people didn't do what they were 17 supposed to do, they got keelhauled. I'm about ready to 18 institute that procedure here. It's time for the jury to get 19 going, and I've had to read all this stuff now. I told you 20 what to do about this verdict form, and it was pretty easy, and 21 it's unnecessary to go through all this stuff. 22 Now, apparently we're going to have to revise it 23 anyway because -- and some of the instructions. What 24 instructions have to be revised because Lawson is not 25 contending that the RIMS brochure is prior art? Which one is</p>
<p>3079</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>3081</p> <p>1 arguing? 2 MR. YOUNG: Your Honor, David Young for ePlus. It's 3 instruction 3-A that was submitted to the Court over the 4 weekend. It lists as I think reference number three, RIMS 5 brochure, and that would have to come out now because it 6 appears that Lawson does not have that as an anticipated 7 reference on its own verdict form. 8 THE COURT: Is that right? 9 MR. McDONALD: Yes, that's right, Your Honor. 10 THE COURT: So I suppose I need to tell the jury 11 simply to disregard any testimony about the RIMS brochure as 12 prior art. 13 MR. McDONALD: No, it not anticipatory prior art 14 meaning it's not all by itself anticipating a claim. We're 15 still using it for obviousness and support for the on sale, the 16 RIMS as prior art and 102(a) and (b), but the brochure, all by 17 itself, we're not contending is an anticipating reference, but 18 it would be used to support number one in the instruction which 19 is the Fisher RIMS system as prior art. 20 THE COURT: What do you mean, to be used to support? 21 If you're going to use it -- 22 MR. McDONALD: It's evidence of the Fisher RIMS 23 system as it was being sold and -- 24 THE COURT: Well, if it's evidence of it, it comes 25 out of 39, too, because you're not contending that it is</p>

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<p style="text-align: right;">3082</p> <p>1 obvious.</p> <p>2 MR. McDONALD: So we're saying it is a printed</p> <p>3 publication and still in it's own right is prior art, but it</p> <p>4 doesn't all by itself anticipate the claims. It can be used</p> <p>5 for the obviousness defense. So it is a piece of prior art.</p> <p>6 It just doesn't anticipate the claims all by itself.</p> <p>7 THE COURT: Anything? Is that the only modification?</p> <p>8 MR. YOUNG: Your Honor, it is listed on the Lawson</p> <p>9 verdict form, so --</p> <p>10 THE COURT: I'm talking about the instructions right</p> <p>11 now. That's the only change in the instructions.</p> <p>12 MR. YOUNG: Yes, yes.</p> <p>13 THE COURT: I've prepared an instruction on</p> <p>14 incorporation by reference that says incorporation by reference</p> <p>15 is a phrase that allows a patent applicant to make another</p> <p>16 document become part of the patent application in such a manner</p> <p>17 that the incorporated document can be considered to be part of</p> <p>18 the patent application just as if the incorporated document had</p> <p>19 been fully set out in the patent application.</p> <p>20 I believe that that is a slight modification from the</p> <p>21 ePlus system -- I mean from the ePlus proposal because it got</p> <p>22 into whether the examiner considered it and all of that, and</p> <p>23 that's not necessary, but I think this instruction is accurate.</p> <p>24 Does anyone disagree with that?</p> <p>25 MR. McDONALD: We have no objection to that, Your</p>	<p style="text-align: right;">3084</p> <p>1 THE COURT: All right, so your form has already made</p> <p>2 that edit.</p> <p>3 MR. YOUNG: Correct, and I believe Lawson's as well.</p> <p>4 THE COURT: All right. Take all the certificate of</p> <p>5 service and all of that stuff off of it, and we'll have a clean</p> <p>6 form for the jury.</p> <p>7 MR. YOUNG: I actually do have some copies of that.</p> <p>8 THE COURT: Can I have it? I believe that the Lawson</p> <p>9 form is -- ePlus form is somewhat cumbersome. The Lawson form</p> <p>10 is confusing, and I think cumbersome is better than confusion.</p> <p>11 These motions that have been filed, judgment as a</p> <p>12 matter of law, that's what you argued the other day, right?</p> <p>13 The motion on 103 is what you argued the other day.</p> <p>14 MS. STOLL-DeBELL: Yes, sir.</p> <p>15 THE COURT: I don't need to deal with that to get</p> <p>16 ready for the jury. Are we ready for the jury?</p> <p>17 MR. ROBERTSON: Yes, Your Honor.</p> <p>18 MR. McDONALD: Yes, Your Honor.</p> <p>19 THE COURT: All right.</p> <p>20 MR. ROBERTSON: Just to be clear, Your Honor, I'll go</p> <p>21 first and address the infringement issues, and then Mr.</p> <p>22 McDonald goes and addresses both, his non-infringement</p> <p>23 arguments and invalidity, and I have rebuttal. Is that your</p> <p>24 understanding?</p> <p>25 THE COURT: Yes. That's what we said.</p>
<p style="text-align: right;">3083</p> <p>1 Honor.</p> <p>2 MR. YOUNG: We have no objection to it, Your Honor.</p> <p>3 THE COURT: All right. I'll make that then -- where</p> <p>4 should that go? Let's make it 30-B.</p> <p>5 MR. YOUNG: I think that would be fine, Your Honor.</p> <p>6 MR. McDONALD: I'm not sure it goes into the prior</p> <p>7 art invalidity section, Your Honor. I think it's more about</p> <p>8 what the patent is, so I would suggest it go earlier.</p> <p>9 MR. YOUNG: Your Honor, I think it's directly</p> <p>10 relevant to the prior art issues in the case given the context</p> <p>11 in which --</p> <p>12 THE COURT: Given your argument, it seems to me as if</p> <p>13 it goes right where I put it. I've reviewed the verdict forms,</p> <p>14 and I think the preferable verdict forms are as ePlus has put</p> <p>15 them, but how does it have to be changed?</p> <p>16 MR. YOUNG: I'm sorry, Your Honor. I didn't hear the</p> <p>17 last point.</p> <p>18 THE COURT: You said the verdict form had to be</p> <p>19 changed. How does it have to be changed?</p> <p>20 MR. YOUNG: I don't think the verdict form from our</p> <p>21 proposal does need to be changed. It was the jury instruction</p> <p>22 30-A that needed to be changed to eliminate the RIMS brochure.</p> <p>23 Neither party's proposal for the verdict form last</p> <p>24 night included the RIMS brochure as an anticipated reference,</p> <p>25 so I don't think that aspect needs to be changed.</p>	<p style="text-align: right;">3085</p> <p>1 MR. McDONALD: May I ask how much time we should each</p> <p>2 expect and how much he's reserving for rebuttal?</p> <p>3 MR. ROBERTSON: I expect that my opening argument</p> <p>4 will be approximately an hour long, and my rebuttal would be</p> <p>5 about half an hour to 40 minutes. I'm going to try do this as</p> <p>6 quickly and efficiently as I can.</p> <p>7</p> <p>8 (Jury in.)</p> <p>9</p> <p>10 THE COURT: Good morning ladies and gentlemen. Now</p> <p>11 we've reached the point in the trial where all the evidence is</p> <p>12 in, and the lawyers now have a chance to make their closing</p> <p>13 arguments, and in those closing arguments, what they will be</p> <p>14 doing is reciting to you what they think the evidence shows and</p> <p>15 explaining to you what they think the evidence proves.</p> <p>16 And they will try to explain to you why they think</p> <p>17 you should return a verdict in favor of their respective</p> <p>18 clients, and that's important because it will help you</p> <p>19 understand each side of the case and the positions they are</p> <p>20 taking and what you have to decide. But remember, what they</p> <p>21 say in these closing arguments is not the evidence. The</p> <p>22 evidence came from the things that have been admitted into</p> <p>23 evidence which you will have back with you.</p> <p>24 You'll have a computer back there that is set so that</p> <p>25 you can run one piece of the evidence which was the</p>

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<p style="text-align: right;">3174</p> <p>1 choice. And that doesn't stop ePlus from going to the</p> <p>2 Patent Office, but it is true and the Judge will</p> <p>3 instruct you that even if a product isn't the subject</p> <p>4 of a patent like TV/2, if it's on sale more than a</p> <p>5 year before the filing date of the ePlus patent, it's</p> <p>6 still prior art. EPlus can't go get a patent on that</p> <p>7 same thing. So that's how it works. So that's why</p> <p>8 the Patent Office doesn't always have all the details</p> <p>9 about what everybody is doing out there.</p> <p>10 So that's why because you have this critical</p> <p>11 information here in the courtroom that the Patent</p> <p>12 Office didn't get why you should reach a different</p> <p>13 conclusion from the Patent Office. So that's why you</p> <p>14 should decide that the claims are invalid.</p> <p>15 Let's go down to question No. 3 about</p> <p>16 infringement. We made it pretty clear from the first</p> <p>17 moment in this case that this issue came down to the</p> <p>18 catalogs issue.</p> <p>19 And if we could go to 45F. Mr. Weaver at</p> <p>20 least acknowledged that 11 of the 12 claims in this</p> <p>21 case required not just one catalog, but multiple</p> <p>22 catalogs in the Lawson system. So if Lawson doesn't</p> <p>23 have multiple catalogs, Lawson at least does not</p> <p>24 infringe those 11 claims. We're all on the same page</p> <p>25 on that. That's why we didn't waste your time on all</p>	<p style="text-align: right;">3176</p> <p>1 preferably, right? Then a textual description of</p> <p>2 items and preferably, not necessarily, images of the</p> <p>3 items.</p> <p>4 So that meets the definition of a catalog</p> <p>5 pretty well. That holds up with your common sense.</p> <p>6 And it's pretty consistent if we go to slide 48, I</p> <p>7 think it is. Even what the patent says about</p> <p>8 catalogs. This is a feature of the invention to have</p> <p>9 multiple catalogs from different suppliers. And it</p> <p>10 gives these examples. And I'll summarize it here, but</p> <p>11 basically it talks about published by a vendor,</p> <p>12 distributor, having the distributor's catalog numbers</p> <p>13 for their listed products. And also vendor</p> <p>14 manufacturer part numbers. Down at the bottom, line</p> <p>15 52 there, it further contained catalogs published by</p> <p>16 some of the vendor manufacturers. Again having part</p> <p>17 numbers and the like.</p> <p>18 Then if you go down to about line 56. It can</p> <p>19 also contain catalogs published by outside suppliers,</p> <p>20 other manufacturers, distributors listing their vendor</p> <p>21 products different from those in the distributor</p> <p>22 catalog. So these are all these different published</p> <p>23 things out there.</p> <p>24 So if we go back to 46. So that was the</p> <p>25 Court's definition of "catalog." Very consistent with</p>
<p style="text-align: right;">3175</p> <p>1 these other deals in the case, why it really came down</p> <p>2 to the catalogs.</p> <p>3 And if we go to the slide 46, this was the</p> <p>4 Court's definition of catalogs. It has the term</p> <p>5 published by a vendor in it, and the Court also has an</p> <p>6 instruction for you on that.</p> <p>7 And we showed you here, this is Exhibit 257,</p> <p>8 it's a demonstrative, but it's nothing of the sort you</p> <p>9 haven't seen before. It's one of these big catalogs.</p> <p>10 We don't get them in the mail so much anymore, but we</p> <p>11 used to. And something like this pretty clearly meets</p> <p>12 that Court definition. You can apply this pretty</p> <p>13 well. It's an organized collection. You have got the</p> <p>14 ladies clothes at the beginning. Then it goes to kids</p> <p>15 and boots and shoes and so on, product by product</p> <p>16 organized. It's about items. Things Sears is selling</p> <p>17 with associated information. Published by Sears.</p> <p>18 They are a seller, a distributor, whatever you want to</p> <p>19 call it. Includes things like a part number, price,</p> <p>20 catalog number, vendor name. Sears is on the front.</p> <p>21 It may not be on every page, but certainly on the</p> <p>22 front.</p> <p>23 I don't know if it has a vendor ID, but this</p> <p>24 list isn't something that's required that you have to</p> <p>25 have all of these. That's why it has the word</p>	<p style="text-align: right;">3177</p> <p>1 what the patent says. What about that last claim?</p> <p>2 I'll just talk about that a little bit. That 12th</p> <p>3 claim. That's Claim 1 of the '172 patent.</p> <p>4 Now, that claim has a claim element that</p> <p>5 refers to something called an order list. So I want</p> <p>6 to show you the Court's definition of that in slide</p> <p>7 49. So even that claim requires a means for</p> <p>8 generating an order list, which is a list of desired</p> <p>9 catalog items. So here's where that concept of</p> <p>10 catalog comes into play here.</p> <p>11 And if we look at slide 49A, Dr. Weaver, his</p> <p>12 analysis was entirely reliant on his opinion that the</p> <p>13 Lawson system had catalogs in it. And that even</p> <p>14 included this claim.</p> <p>15 And if we could go to the next slide here.</p> <p>16 This was Dr. Weaver's testimony specific to that Claim</p> <p>17 1 of the '172 patent. It's kind of a long question</p> <p>18 here, but what's being shown here is his opinion about</p> <p>19 Lawson infringing that claim, and specifically the</p> <p>20 part of that claim that refers to an order list, that</p> <p>21 was based in part on his analysis concluding that the</p> <p>22 desired items - do you remember an order list is a</p> <p>23 list of desired catalog items - included in results of</p> <p>24 searches of product catalogs, and that's what he</p> <p>25 called catalog items. That's how he looked at it for</p>

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<p style="text-align: right;">3178</p> <p>1 purposes of his analysis. The items you get back from 2 product catalogs. So he relied on his analysis 3 involving catalogs actually for all 12 of the claims. 4 So we showed you the testimony of Mr. Shamos, 5 though, that the Lawson system doesn't have catalogs 6 and therefore it doesn't infringe any of the 12 7 claims. It's completely different from all that. And 8 to illustrate what the Lawson system really is here, 9 I'm going to show you something. This is from 10 Plaintiff's Exhibit 361, page 49 of that exhibit, page 11 2243. The last four digits are 2243. Do you remember 12 Mr. Weaver showed you some demonstrations. 13 This particular one he didn't talk about. He 14 didn't present this one to you. In fact, we talked 15 about it, and this has something called an active 16 items at requesting location list. This is about the 17 closest thing in any of ePlus' materials of showing 18 you what an item master in the Lawson system actually 19 looks like. 20 It's this list of products. At the far left 21 is an item number. That's the number that the 22 customer assigns. The first one is 1007, 1008, 1009. 23 The customer puts those in there in the order that the 24 customer enters those item numbers. They have some 25 descriptions of the products there. You see tape.</p>	<p style="text-align: right;">3180</p> <p>1 the Court has defined it. 2 So Dr. Weaver never showed either a single 3 vendor catalog that actually came from a vendor and 4 said, Oh, look. Here's one of those vendor catalogs 5 that comes from somebody selling products to a Lawson 6 customer and compare that now to the item master. Oh, 7 look, they look similar, don't they? Dr. Weaver never 8 did that. 9 The reason he didn't do that is because he 10 wouldn't have been able to show that that comparison 11 would hold any water. 12 So they talk about what Dr. Weaver did do, 13 but it's what Dr. Weaver did not do that's the most 14 important thing here. 15 And they didn't do that even though they 16 picked four of our customers to give them information 17 about who our customers are. They picked four of them 18 to depose and subpoena. And you heard from -- I think 19 you heard from three of them in the case as it wound 20 up. Mr. Yuhasz was live, Mr. Matias and Ms. Cimino. 21 Those are our customers that they picked. They didn't 22 show you anything in those depositions or documents 23 that would show catalogs. 24 If we could go to slide No. 51. Actually, 25 let's go to 52. So Lawson doesn't infringe these</p>
<p style="text-align: right;">3179</p> <p>1 Then it goes to steri strips. I guess that's some 2 sort of a bandage, and so on. 3 These are these very short descriptions that 4 are only 30 characters or less. So you can see how 5 abbreviated they are. And you heard the testimony 6 that those are the things the customer comes up with. 7 And they're not trying to sell anything here. They're 8 not trying to give you a big description to entice you 9 to buy anything. They're just reminding themselves 10 which one that is because this is the thing they buy 11 over and over. 12 Over on the far right it talk about that 13 being tracked. That's their inventory. This is their 14 own personal inventory. Yes, we track it. Yes, we 15 monitor our inventory on this thing. This is the 16 closest thing that ePlus had to show you what the item 17 master actually looks like. And they have never 18 linked this or anything else to a published vendor 19 catalog. It doesn't look like it, and it's from the 20 customer. This is an organized collection of 21 information, yes, but it's the customer who organized 22 it. The vendor never even sees this. 23 So how could the vendor publish this? An 24 organized collection. And that's what has to be 25 catalogs here. It just doesn't look like a catalog as</p>	<p style="text-align: right;">3181</p> <p>1 patents because it doesn't have multiple catalogs. It 2 doesn't have published catalogs. It doesn't have 3 catalogs published by inventors. We've got very basic 4 information. 5 The whole purpose of an item master is 6 different from the purpose of catalogs. Catalogs are 7 from vendors to sell things. The item master is to 8 track personal customer's private inventory. Short 9 descriptions selected by the customers. It's an 10 inventory list like a shopping list just trying to 11 keep track of what they've got in stock. Also control 12 what their employees can buy. That's a big thing here 13 in comparison and contrast to catalogs. 14 You heard Mr. Robertson talk about comparison 15 shopping. That's the intent of these patents. Let's 16 the employees go out there and maybe do some shopping 17 and things. And that might be good in some 18 situations. If some customers want to do that, that's 19 fine. But for some companies, they would say, I don't 20 want my employees doing that. I just want them to go 21 buy the pens. I don't want them out there shopping 22 around looking for new pens that are different or more 23 expensive or whatever and wasting time on that. 24 The Lawson system is all about control. The 25 patented system a all about empowerment of the</p>

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<p>3182</p> <p>1 customers. Two very different purposes here.</p> <p>2 So let's go to the evidence now on the issue</p> <p>3 of the catalogs. The testimony showed that Lawson</p> <p>4 doesn't have catalogs.</p> <p>5 Can we go to slide 53, I think it is. This</p> <p>6 is Mr. Christopherson's testimony here. Using the</p> <p>7 definition the Court just gave for published by a</p> <p>8 vendor, is the customer's item master database ever</p> <p>9 published by a vendor? The Judge said just answer it</p> <p>10 yes or no. Mr. Christopherson then answered no. So</p> <p>11 Lawson people showing that the item master is not a</p> <p>12 catalog as the Court defined it. Customer testimony</p> <p>13 is well.</p> <p>14 If we go to 55. This is Mr. Yuhasz. He was</p> <p>15 the customer that showed up in court here. He was</p> <p>16 nice enough to do that from Novant. Is this data in</p> <p>17 Novant item master generally known? No.</p> <p>18 Is the item master data maintained as</p> <p>19 private? Yes.</p> <p>20 And the supporting differences here from the</p> <p>21 published catalog. If we go to the next slide, 56.</p> <p>22 Mr. Yuhasz actually explained that they already had</p> <p>23 the Lawson system that's accused of infringement in</p> <p>24 this case with the requisition and purchase order and</p> <p>25 inventory control modules, but they were looking for</p>	<p>3184</p> <p>1 Again, the parts master, that's the same sort</p> <p>2 of thing as an item master, correct? Yes.</p> <p>3 Mr. Momyer. If we go to the next slide.</p> <p>4 Again, reinforcing that that RIMS system as of</p> <p>5 April '93 had that parts master. That would not meet</p> <p>6 the Court's definition of a catalog, Mr. Momyer's</p> <p>7 testimony.</p> <p>8 THE COURT: It says Mr. Kinross.</p> <p>9 MR. McDONALD: I'm sorry. Is that Kinross?</p> <p>10 You're right. It's Mr. Kinross. Thank you.</p> <p>11 Then go to the next slide. So we're back to</p> <p>12 Mr. Momyer again here. This is confirming that that</p> <p>13 parts master in the RIMS system, that's parts that a</p> <p>14 customer would select, just like in the Lawson item</p> <p>15 master. That's what they would track for their</p> <p>16 stockroom or inventory. Just like the Lawson item</p> <p>17 master.</p> <p>18 Go to the next slide. This is the third</p> <p>19 inventor who testified, Mr. Johnson, now. Again</p> <p>20 acknowledging the RIMS system had a parts master, but</p> <p>21 he didn't think that it had a catalog, though.</p> <p>22 Then if we go to the next slide. This is</p> <p>23 Mr. Hilliard, their invalidity expert. Of course he's</p> <p>24 Mr. No. This was an easy quote to find because</p> <p>25 nothing was a catalog for him. But he acknowledged</p>
<p>3183</p> <p>1 the ability to have what he called a better option</p> <p>2 that we felt had product catalogs. They wanted to be</p> <p>3 able to search for more things.</p> <p>4 They wanted something different from what</p> <p>5 Lawson had. Were these features as the Lawson system</p> <p>6 as it was installed at Novant did not provide? Yes.</p> <p>7 Here's his testimony that he, having one of</p> <p>8 the accused systems, didn't think it had product</p> <p>9 catalogs. He was actually putting it out for bid. He</p> <p>10 was willing to write another check for somebody else</p> <p>11 to go in and add that capability. Well, there's some</p> <p>12 real world market information for you that really</p> <p>13 shows why the Lawson system doesn't have catalogs.</p> <p>14 If we could go to the next slide. This is</p> <p>15 the inventor testimony. They didn't talk about the</p> <p>16 Lawson system, but they did talk about the parts</p> <p>17 master that they acknowledge was like an item master.</p> <p>18 This again relates to the have your cake and</p> <p>19 eat it too, issue. So that parts master that has the</p> <p>20 same sort of things like we have on the blow up here,</p> <p>21 item part number, a short description, tracking and</p> <p>22 inventory, that isn't the same thing as the catalogs</p> <p>23 you had in mind as the invention for these</p> <p>24 patents-in-suit, right? I don't think so. For me,</p> <p>25 no, they aren't the same.</p>	<p>3185</p> <p>1 here with the Court's definition of catalogs that</p> <p>2 there were no databases in the RIMS system that met</p> <p>3 the Court's definition of catalogs.</p> <p>4 So you have all of these Lawson witnesses,</p> <p>5 all the inventors, even one of ePlus' experts</p> <p>6 acknowledging that a parts master, which was just like</p> <p>7 an item master, doesn't meet the definition even for</p> <p>8 one catalog, let alone multiple catalogs.</p> <p>9 So who was the only witness in this case who</p> <p>10 said Lawson's item master was multiple catalogs? It</p> <p>11 was Dr. Weaver. Dr. Weaver's approach, just about any</p> <p>12 list of item information is not only a catalog, it's</p> <p>13 actually multiple catalogs. That's incredible. It</p> <p>14 defies common sense. And we went through that with</p> <p>15 him in a couple of ways.</p> <p>16 If we go to the slide 63. Remember, I asked</p> <p>17 him, because he was saying that as long as the</p> <p>18 information originated in some part from a vendor,</p> <p>19 that meant the vendor actually published the organized</p> <p>20 collection. I gave them that example if I had a</p> <p>21 personal address book, and I was going to put a phone</p> <p>22 number in it that came from a phone book, my address</p> <p>23 book if it has one entry from a published phone</p> <p>24 company's phone book, my address book has an entry in</p> <p>25 it that originated from the phone book, right,</p>

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<p>3186</p> <p>1 Mr. Weaver? Correct.</p> <p>2 But in that case, even if it's my personal</p> <p>3 address book, I didn't publicly disseminate it. I</p> <p>4 kept it in my own house. Would you consider that to</p> <p>5 be a published phone book? Answer: Well, that data</p> <p>6 came from a published phone book, so, yes.</p> <p>7 So Dr. Weaver said the address book is the</p> <p>8 same thing as a published phone book. It doesn't make</p> <p>9 any sense. But it doesn't end there.</p> <p>10 Can we go to the next slide, please. I went</p> <p>11 on to talk to Dr. Weaver about how within the item</p> <p>12 master -- he had to come up with a way to say this one</p> <p>13 database was actually multiple catalogs. So he had to</p> <p>14 be a little creative there. What he came up with is</p> <p>15 this line of reasoning. So if you search for the word</p> <p>16 "blue," you get back results from the Lawson item</p> <p>17 master that would be the catalog of blue things</p> <p>18 because when you search "blue," you're searching for</p> <p>19 the item master description, right? Answer: Yes.</p> <p>20 If I search for the number five, it would</p> <p>21 generate a list of all the things that had a number</p> <p>22 five in the description? It would.</p> <p>23 In your opinion each one of these is a</p> <p>24 separate catalog; is that right? Yes.</p> <p>25 So is there really any limit to the number of</p>	<p>3188</p> <p>1 Would the fact you could search that single CD-ROM for</p> <p>2 products of a certain color, would that mean the</p> <p>3 CD-ROM actually contains multiple catalogs depending</p> <p>4 on what word you searched with? His answer was: To</p> <p>5 me, the catalog would indicate the company you were</p> <p>6 buying the product from, he went on to explain.</p> <p>7 Bottom line. So it would be a single catalog.</p> <p>8 So even though you could do keyword searches</p> <p>9 and look up all sorts of different words within that</p> <p>10 catalog, it's still as you understood it for purposes</p> <p>11 of your patent a single catalog, right? Yes.</p> <p>12 So here is Mr. Momyer applying a little</p> <p>13 common sense by saying a catalog is a catalog. It's</p> <p>14 not a limitless number of catalogs. But he's one of</p> <p>15 the inventors here talking about a part of the patent,</p> <p>16 so that's really important here.</p> <p>17 I talked to Dr. Weaver a little more about</p> <p>18 the item master. I think ePlus and their expert knew</p> <p>19 that this catalog issue was pretty important from day</p> <p>20 one in this case or certainly before trial. And that</p> <p>21 the item master and whether it's catalogs is</p> <p>22 important. So it's pretty striking, I think, wasn't</p> <p>23 it, when we had slide 15 from his presentation which</p> <p>24 is my slide No. 67? Do you remember he had these</p> <p>25 blocks that he stacked up. I talked to him, and he</p>
<p>3187</p> <p>1 catalogs in the Lawson item master the way you look at</p> <p>2 it? No.</p> <p>3 The Lawson item master has a limitless number</p> <p>4 of catalogs according to Dr. Weaver. Mr. Hilliard,</p> <p>5 though, would say a parts master, which is just like</p> <p>6 an item master, has no catalogs at all. Having their</p> <p>7 cake and eating it, too. That's what we have going</p> <p>8 on.</p> <p>9 And that's even established on this last</p> <p>10 thing with Mr. Momyer's testimony. If we could go to</p> <p>11 slide No. 65. We talked to Mr. Momyer about this part</p> <p>12 of their patents-in-suit.</p> <p>13 Go back to 65, please. Blow up the part</p> <p>14 that's yellow. This is in the background section of</p> <p>15 the patents. They acknowledge, Well, there are</p> <p>16 computer systems out there capable of searching</p> <p>17 databases containing a product catalog of a particular</p> <p>18 vendor. For example, on CD-ROM.</p> <p>19 But down here you see around line 10, Well,</p> <p>20 those are limited, though, in that only one such</p> <p>21 vendor catalog. That's one such vendor catalog is</p> <p>22 accessible to a user at any given time.</p> <p>23 So I asked Mr. Momyer about that since he's</p> <p>24 one of the inventors of this thing. If we could go to</p> <p>25 No. 66, please. I asked him about that section.</p>	<p>3189</p> <p>1 said, Those system shown in those systems were a</p> <p>2 complete and comprehensive infringing system. It had</p> <p>3 everything that had to be infringing, including</p> <p>4 multiple catalogs, right? Eleven of the 12 claims</p> <p>5 specifically say multiple catalogs or collection of</p> <p>6 the catalogs, at least two catalogs. Some variation</p> <p>7 on it.</p> <p>8 So the item master is the catalogs. Dr.</p> <p>9 Weaver, where is the item master? Do you remember</p> <p>10 that pause? Do you remember he was staring at that</p> <p>11 screen for a long time? This was his own slide he</p> <p>12 did. But he stared at it for a long time there</p> <p>13 because he knew it wasn't there. And that's really</p> <p>14 the story of their whole infringement case. It's just</p> <p>15 not there.</p> <p>16 I want to show you one more thing about</p> <p>17 Dr. Weaver's analysis. This has to do with the</p> <p>18 selecting catalogs or portions of the database to</p> <p>19 search issue. That's not in all the claims here, but</p> <p>20 I think it's important to illustrate.</p> <p>21 67A, if we could go to that. This is the</p> <p>22 part of the patent that actually talks without</p> <p>23 selecting catalogs to search. You get a choice of</p> <p>24 some catalogs. In the example here they have four.</p> <p>25 It doesn't have to be these four, obviously, but this</p>

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<p style="text-align: right;">3298</p> <p style="text-align: center;">3298</p> <p>1 (Jury in.)</p> <p>2</p> <p>3 THE COURT: The jury has decided that it would like</p> <p>4 to return home for the evening and then return in the morning</p> <p>5 and deliberate. What is your pleasure on the time to</p> <p>6 deliberate? Do you want to start at 9:00, start at 9:30?</p> <p>7 Nine o'clock we'll be here and have stuff ready for</p> <p>8 you, and you be ready and you can have -- you can take whatever</p> <p>9 time you feel like you need to deliberate. If you leave your</p> <p>10 notebooks the way you usually do, Mr. Neal will take care of</p> <p>11 them. Thank you. Drive carefully.</p> <p>12</p> <p>13 (Jury out.)</p> <p>14</p> <p>15 THE COURT: Have all these transcripts and these</p> <p>16 things -- you've got everything you need; right?</p> <p>17 MR. STRAPP: Yes.</p> <p>18 MR. CARR: I believe so.</p> <p>19 THE COURT: One thing I need for you all to do is to</p> <p>20 see if there's anything that needs to be cleaned up that I need</p> <p>21 to decide. For example, they've got these motions that have</p> <p>22 been filed yesterday -- this morning or yesterday. I don't</p> <p>23 know what -- by Lawson.</p> <p>24 I need a briefing schedule on them and see what I'm</p> <p>25 supposed to do, and that means you all need to get moving and</p>	<p style="text-align: right;">3300</p> <p style="text-align: center;">3300</p> <p>1 least two attorneys here at all times so I can be reached by</p> <p>2 phone. I'm just right down here at the Hilton Garden Inn, so I</p> <p>3 can be here in four minutes.</p> <p>4 THE COURT: Do you have to trade shoes or can you --</p> <p>5 MR. ROBERTSON: I come equipped. I will be right</p> <p>6 over here pronto, but we'll have somebody here at all times.</p> <p>7 THE COURT: That's fine.</p> <p>8 MR. ROBERTSON: All right. Thank you.</p> <p>9 THE COURT: Now, is he coming back? Mr. McDonald or</p> <p>10 Ms. Stoll-DeBell?</p> <p>11 MR. CARR: As far as I know, he's not coming back.</p> <p>12 THE COURT: Well, then, I know not to schedule any</p> <p>13 arguments, I guess, until I'm certain. All right. I guess</p> <p>14 that solves it for now. Thank you very much. We'll be in</p> <p>15 adjournment.</p> <p>16</p> <p>17 (Court adjourned.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">3299</p> <p style="text-align: center;">3299</p> <p>1 decide how you want to proceed, little things like that so we</p> <p>2 can get that sorted out. I'd like to get all this done just as</p> <p>3 soon as I can.</p> <p>4 MR. ROBERTSON: I'll call Mr. McDonald tomorrow once</p> <p>5 he gets back to Minnesota. I understand he's gone back.</p> <p>6 THE COURT: He's what?</p> <p>7 MR. ROBERTSON: I'll call Mr. McDonald tomorrow in</p> <p>8 Minnesota. I know he's traveling --</p> <p>9 THE COURT: He's in Minnesota?</p> <p>10 MR. CARR: He is leaving this evening, yes.</p> <p>11 THE COURT: Are you fully empowered?</p> <p>12 MR. CARR: Yes, sir.</p> <p>13 MR. ROBERTSON: I'll just --</p> <p>14 THE COURT: Does he understand that the juries have a</p> <p>15 lot of questions sometimes?</p> <p>16 MR. CARR: He does.</p> <p>17 THE COURT: Okay.</p> <p>18 MR. ROBERTSON: I'll work out a briefing schedule,</p> <p>19 Your Honor, and we'll take care of it in short order. Maybe we</p> <p>20 can decide some of things have been mooted by some of Your</p> <p>21 Honor's rulings.</p> <p>22 THE COURT: They very well may have. I don't know</p> <p>23 the answer to that. Some of them may not, but I want to make</p> <p>24 sure we get it done.</p> <p>25 MR. ROBERTSON: Your Honor, I intend on having at</p>	